

SAINT REGIS MOHAWK TRIBE COURT

Melody Point & Patricia White,)	Case No: 10-LND-00005
Plaintiff/Appellant)	
v.)	
Ruth Peters,)	
Defendant/Respondent)	
)	

DECISION AND ORDER

I. HISTORICAL BACKGROUND:

Today the Court is called upon to address a historic "troublesome and vexatious"¹ issue for members of the St. Regis Mohawk Tribe: Land disputes on the Saint Regis Mohawk Indian Reservation (SRMIR). In addressing this case, as well as other cases now pending in front of the Court, it would be simple and expedient to simply utilize U.S. legal principles in disposing these cases in what some would deem to be an efficient manner.

On behalf of the Tribal Court, I have chosen not to pursue that efficient manner, and instead have chosen to follow the Saint Regis Mohawk Tribe (SRMT) Laws given to the Court, and to do what is 'just' over what is 'expedient'. Although this has added considerable time in deliberating upon these cases, something we apologize to the parties for, it does not change the requirement that an exacting review of land holding patterns on the SRMIR reservation was necessary in order to properly deliberate and decide the cases now before the SRMT Court.

Although lengthy, it is clear that this exacting review will assist the SRMT Court in deliberating upon these cases and cases that may come for review in front of the SRMT Court in the future.

LAND HOLDING ORIGINS

The civil code of the St. Regis Mohawk Tribe, under the section titled "Applicable Law", provides for the following:

¹ See NY Assembly Document No. 131 February 9, 1841.

"[3.] Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions, and practices."²

The SRMT Court finds that the following is meant within the language used within the SRMT Civ. Code, as it relates to land disputes.

Clearly the community of Akwesasne has the word Mohawk inserted into many of its current locations and institutions, and this facet clearly references the historical origins of some SRMT members and residents to the Mohawk Nation, which is one of the 'founding' Nations of the Iroquois Confederacy³. Yet, it is also clear that not all members and residents of Akwesasne trace their historical origin to the Mohawks, and subsequently, the Iroquois Confederacy. The confusion this can cause is compounded by the fact that the primary aboriginal language spoken in Akwesasne is Mohawk. Yet, this only helps explain the rise in the use of the term Mohawk in Akwesasne.

Some of this confusion originates from the establishment of certain Tribal Nation/Communities on the shores of the St. Lawrence River. One particular Tribal Nation community was that of Caughnawaga/Kahnawake which was established across from Montreal (PQ) Canada in the mid to late 17th Century. In this community were not just Mohawks, but also other member Nations of the Iroquois Confederacy (namely Oneida), as well as Algonquin, Huron (/Wyandot), and Abenaki Nations. As noted, this community would become known as Caughnawaga/Kahnawake, and when the Iroquois became the more dominant group located there, it became known as the Iroquois of the Sault.⁴ Although this village quickly came into alliance with France, it would also be a 'founding member' of its own alliance known as the Seven Nations of Canada. This 'other' alliance would, to the chagrin of both British and French monarchy officials, maintain alliance with other Tribal Nations to its East, North, and with the Iroquois to the South.⁵ The military importance of this Community/Nation became very apparent during the many wars of the 18th Century, and even more so during the period of what is commonly called the French & Indian War, or the Seven Years War.

This history is included because it is from here that we can gather some crucial and relevant information with respect to what life 'resembled' within the Caughnawaga/ Kahnawake community during this time period. This includes the native 'land holding' patterns internal to the Caughnawaga/Kahnawake community. Louis Antoine de Bougainville, who served as aide-

² See Saint Regis Mohawk Tribal Court TCR-2008-19, Civil Code, (hereinafter SRMT Civ. Code) at § V(a) (3).

³ The other Iroquois Nations being: The Seneca, Cayuga, Onondaga, Oneida, Mohawk, and later joined by the Tuscarora.

⁴ Which is in reference to the Lake St. Louis rapids, that were, in the St. Lawrence River directly in front of the Community.

⁵ The Seven Nations, or Fires, as they are referenced, would include the Huron/Wyandot of Lorette, Abenaki of St. Francis, and the Iroquois of the Sault-Caughnawaga/Kahnawake, the Missassauga-Algonquin-Iroquois of the Lake of Two Mountains (Kanasatake), and the Iroquois at LaPresentation. To the East were Micmacs and Penobscots of the 14 Fires, to the North the Odawa. See Hough *supra* note 22, and PETER MACLEOD. THE CANADIAN IROQUOIS AND SEVEN YEAR'S WAR. Dundurn Press. (1996).

de-camp to the French General Montcalm during the French & Indian War (1756-1760), leaves what is perhaps the best glimpse of the issues which are of concern to us here. In Bougainville's journal he recorded the following observation on July 9th 1757 with respect to Caughnawaga/Kahnawake:

The village at the Sault is attractive, *laid out in regular form* with a parade ground which divides it and serves as a riding field, for they have many horses and exercise them continually. The church is pretty and well decorated. The Indians have, as do those at the Lake, fields cultivated by their women, fowl and cattle, *all individually owned. They sell, buy, and Trade just like Frenchmen.*⁶ [emphasis added].

This passage becomes extremely relevant when one recognizes that it was from the 'Iroquois of the Sault' that a majority of the 'founding families' of Akwesasne originated from.⁷ And from all appearances, the land holding pattern then in use in Caughnawaga/Kahnawake was emulated and/or transferred to Akwesasne.

Customary Land Holding in

AKWESASNE

There is not readily available⁸ any documented first hand observations made during the period of 1760 to 1780 with respect to land holding patterns in what is called Akwesasne, and later on, synonymously the St. Regis Mohawk Indian Reservation.⁹ Yet, other proofs show that the land holding pattern which existed in Caughnawaga/ Kahnawake was duplicated in Akwesasne.

In the post revolution period (June 1786) an ensign with the British Military was traveling through the St. Lawrence River Valley and noted the following observations:

On the Opposite side of the River is an *Indian Village called St. Regis*. I do not know to what Nation this village properly belongs but believe the most part of its inhabitants were originally a Branch of the Hurons. It is now a considerable Village can produce Warriors which are esteemed as good ones. The Last House in this Village is exactly on the 45th Parallel of

⁶ See, ADVENTURE IN WILDERNESS. THE AMERICAN JOURNALS OF LOUIS ANTOINE DE BOUGAINVILLE, 1756-176" 124-125 (Edward P. Hamilton trans. ed., Univ. of Oklahoma Press 1964).

⁷ These include the Tales of those Captured during the intermittent wars, the more famous being the families of Williams, Tarbell and Rice. Said surnames still exist in both Kahnawake and Akwesasne. See, John Demos, THE UNREDEEMED CAPTIVE: A FAMILY STORY FROM EARLY AMERICA. Alfred A. Knopf. 1994. (discussing Kateri's Kin).

⁸ To date.

⁹ The term Mohawk was added only later, and is a rather recent phenomenon.

Latitude. Of course this is by treaty the last Settlement of the English. On the South Side the River as the boundary from hence runs up the center of the Lakes and Rivers go I only know where as to islands. *They are all the property of the Indians who will not part with them.*¹⁰ [emphasis added].

Later in the same journal another entry records the following:

"On these Islands all the way up the River and even above Cataruque *the Indians grow all the corn the[y] make use of as well as Pumpkins Squashes and even a few Mellons.* [Sic]"¹¹

These observances indicate that clearly those Indians of the village of St. Regis, who in large part had emigrated from Caughnawaga/Kahnawake, brought with them the notions of property ownership, and began agricultural pursuits utilizing their property. Further evidence of this 'land use' knowledge can be discovered in the following:

Araguente was a Caughnawaga Indian and a trader, which is indicated by a series of leases for land and a mill-site near Fort Covington, New York. Two of these leases are recorded in the County Clerk's office at Plattsburgh, New York; the first of these, dated December 15, 1798, is between 'William Gray, of St. Regis, trader of the one part, and Thomas Arakouante of the Village of Caughnawaga of the 2d part, and [several] Chiefs of the Indians of St. Regis of the 3rd part.' In which Gray assigns to Araguente his lease from the Indians. The second lease, dated December 29, 1798, is 'between Thomas Arakouante of Caughnawaga, Trader, and James Robertson of Montreal, Merchant,' in which Araguente in turn assigns the lease to Robertson.¹²

Therefore, in combination these observances clearly show some sense of property control, for both agricultural and commercial purposes, by the Indians of St. Regis. This leaves a separate question though, was there any sense of an individual Indian possessing property ownership rights. The following from 1804 sheds some light on this issue, and seems to answer that inquiry in the affirmative:

Crossed from Cornwall to St. Regis an Indian Village of about 200 warriors....*They have tolerable log houses, iron stoves-chimneys-glass windows etc.... many of their houses are of squared log & shingled but more of rough log covered with Elm bark. ...The Indns*

¹⁰ See, THE AMERICAN JOURNALS OF LT. JOHN ENYS 96 (Elizabeth Cometti ed., Syracuse University Press 1976).

¹¹ *Id.* At 96.

¹² See, McLellan, H. and Charles McLellan. Eds. "A Quarterly Magazine of American History." *The Moorsfield Antiquarian*, 1.2 (1937): 195.

[Sic]. Have contributed for building a Mill, the revenue of which they allow the priest....¹³
[emphasis added].

Although demonstrative of the early history of Akwesasne, it appears that a more exacting description is needed. For that, we turn to other sources.

Following the War of 1812 both Britain (British Canada) and the United States agreed to form a 'joint-commission' to set the international boundary between the two countries. Both countries subsequently appointed their own commissioners and provided support staff which largely consisted of commissioners, surveyors, and lay workmen. The work was commenced in earnest around 1817, and at that time due to the nature of the work, the language contained in treaties entered into between the two countries, and the location of 'St. Regis', the joint-Commission arrived at St. Regis in 1817. Most telling for current purposes is the journal maintained by Major Joseph Delafield which contained his observations made during that time.¹⁴ The following passages from that diary provide a description of St. Regis.

Arrived at the village of St. Regis in the afternoon, having first stopped at Col. Ogilvy's camp a little north of the village on the Isle de St. Regis. St. Regis contains but one or two English or American residents. A Catholic priest is the tribunal to which the natives on all occasions refer.¹⁵

With respect to agriculture Delafield notes the following:

Observed some squaws planting seeds which had previously covered in the earth, and permitted to remain til germinating-having found their place of deposit they carried off only such seeds as had sprouted, to plant, thus securing a crop without any wasteland. The seeds were corn, cucumbers, peas & beans. *The Indians of St. Regis cultivate considerable land & much of this island....*¹⁶

In further description of some of the islands possessed and cultivated by 'the Indians,' Delafield notes that they are: "Considerable cultivated by Indians. Could not learn that they could grant satisfactory titles. An apple orchard was then in full bloom. Strawberry, blackberry & gooseberry vines are found."¹⁷ Furthermore, during this period Delafield had an opportunity to observe the 'Corpus Christi' in St. Regis and he describes: "*The village has been prepared for the*

¹³ See, Lord SELKIRK'S DIARY, 1803-1804: A JOURNAL OF HIS TRAVELS IN BRITISH NORTH AMERICA AND THE NORTHEASTERN UNITED STATES 196 (Selkirk, T. D., & White., P. C. eds., (1958). Further, it is noted in other sources that the Indians of St. Regis built their own church at a cost of 800l.

¹⁴ See, Major Joseph Delafield. *The Unfortified Boundary. A diary of the first survey of the Canadian Boundary Line from St. Regis to the Lake of the Woods by Major Joseph Delafield an American Agent under Articles VI and VI of the Treaty of Ghent.* (1943).

¹⁵ *Id.* at 139 (day of May 20, 1817).

¹⁶ *Id.* at 140 (day of May 29, 1817).

¹⁷ *Id.* at 142 (day of June 5, 1817).

occasion, by sweeping the lanes which are in green sod, & *very regular*, and planting rows of poplar & hemlock, on either side giving it quite a fanciful appearance.”¹⁸

When the joint-commission needed storage space, Delafield notes that “*The Chiefs of the village assemble at our lodgings to execute a lease of a store lot to Judge Atwater for 10 dills., yearly rent, the delivery of which I witness.*”¹⁹ As a collective whole, these observations clearly begin to show a sense of property ownership was already in existence on the St. Regis Mohawk Indian Reservation/Akwesasne. Perhaps the best description of ‘reservation life’ and Reservation Land Holding patterns from that time is discovered in the diary entry for July 13, 1817:

There are some good looking fields of grain on this island, which are cultivated almost exclusively by the women. Corn, wheat, peas, and potatoes & beans chiefly. *He who first cultivated a plot of ground becomes the possessor, and by this use gains a right to sell his privilege.* The Chief Loran, an industrious sober & prudent old man, is the greatest farmer and has the most cleared land by purchase of privilege in part. [emphasis added].²⁰

This clearly provides early evidence of some sense of the privilege and/or right associated with property control on the St. Regis Indian Reservation by an individual St. Regis Indian: Those who first cultivated become the possessor. In addition, the passage clearly shows that ‘property transfers’ were occurring by and between St. Regis Indians.

Proof of the security of an individual St. Regis Indian in their land can be gleaned from other sources by 1847, and this information originates from the so-called northern (Canadian) portion of the territory of Akwesasne:

When an Indian is once in possession of a piece of land, is he secure from the intrusion of other Indians; also, has he power by usage, of Transmitting it to his heirs or conveying his interest in the property to other members of the tribe, or other parties?

Any Indian, whether man or woman, once in possession, by purchase or otherwise, of a piece of land within the tract held and owned by the tribe in common, *is, by usage, protected against intrusion of any other person or party, and has the right of transmitting his or her interest therein to their heirs, or of conveying it to any other Indian of the tribe, but to no other persons.*²¹[emphasis added].

¹⁸ *Id.* at 143 (day of June 8, 1817).

¹⁹ *Id.* at 145 (day of June 19, 1817).

²⁰ *Id.* at 151.

²¹ See, Appendix to the sixth volume of the journal of the legislative assembly of the province of Canada, from the 2nd day of June to the 28th day of July, 1847, both days inclusive, and in the tenth and eleventh years of the reign of our Sovereign Lady Queen Victoria being the third session of the second Provincial Parliament of Canada session; Appendix(T.), Appendix No. 5, Answers from the Resident Superintendent of the Indian Department at St. Regis.

This observation is confirmed later in the same report by another answer given to the same style question:

Their cultivated and uncultivated lands are not divided into regular portions; each Indian makes choice of a piece of land according to his taste. The chiefs do not choose.

Similarly:

When an Indian is in possession of a piece of land he holds it as proprietor; no other Indian can take it from him. He may by custom transfer it to his heirs, or sell it to any number of the Tribe, but not to the whites. [emphasis added].

One would be prone to say that this is only pertinent to the so-called northern portion of Akwesasne. Yet, other historical observations from the same time period confirm the individual St. Regis Indian right to hold their lands. In 1852, the noted New York State Historian Franklin B. Hough would also travel through the so-called 'American portion' of the St. Regis Indian Reservation and recorded his observations at that time:

The surrounding fields, are an open common, without separate enclosure, and are used as a public pasture by the inhabitants. Around the cabin of the villagers are usually small enclosures, devoted to the cultivation of corn, and culinary vegetables, *which by the right of occupancy have come to be considered the private property of individuals, and as such are bought and sold among the natives, although the law recognizes no such private ownership, and holds them all as tenants in common, denying them the right of buying or selling land, except to the government.*²² [emphasis added].

For clarification it is apparent that Hough's statement "although the law recognizes no such private ownership" is NOT in reference to the laws or customs internal to the St. Regis Indian Reservation, but rather to the neighboring Anglo-American legal system.²³ Confirming this is the observation that the customary land holding mechanism at St. Regis, by the end of the 19th Century, had evolved to the point where written documents were used. This can be seen in the following extracts from records in the SRMT Clerk's Office:

November 19th 1898,

Moe's Na So Ta Ko washios Wentsianinon ne tsi nar ne tekaronIa ke
[Sold land, Two Blue Skies (name)]
niho ninon ne watio ta on
[he bought it from]

²² See, FRANKLIN B. HOUGH. A HISTORY OF ST. LAWRENCE AND FRANKLIN COUNTIES, NEW YORK, FROM THE EARLIEST PERIOD TO THE PRESENT TIME. 110,113. Little. (1853). (Identifying June 1852 as the time of Hough's visit).

²³ In all likelihood Hough was referencing New York Property law in this regard, and the minimal Federal Indian Law then in existence.

She Te ni ha on wen tsia kenha
 [*Land that used to be his*]
 Ken na hiion \$80.00
 [*Good hide or leather*]
 Tionhonskwaron enska
 [*One cow*]
 Ta Hiion
 [*I gave him*]
 Ken nia ha tkene \$30.00
 [*He took hold, grabbed or accepted the deal*]
 Owistha \$40.00
 [*Money*]
 Tanon rikaro tani ne \$10.00
 [*And I lent him*]
 Tho nenka wa o ti teh
 [*Now it is finished \$80.00*]²⁴

Following this transaction, another is noted in the SRMT Records:

November 5th 1900

So Se Sho Tien Tonh
 [*Reverts back or goes back to (Sose, owned it first)*]
 Wahiiio wentsianinon netetia Tekha
 [*I gave, bought or sold land, the land goes up against (setting a boundary mark)*]
 Ne Mose (?) Raonwentsiakenha
 [*It was Mose's land*]
 Tanon tekeniiashe tsiohonskwaron
 [*And a pair of cows*]
 Kon nia hatkeneh \$130.00
 [*It convinced him or sealed the deal (wa 'thokoni- he couldn't resist the price)*]
 Oksaok akwekon Wak kariake
 [*Right away I paid it off*]
 Owista
 [*Money*]
 I:I John Garrow
 [*Me John Garrow*]²⁵

Therefore, the foregoing makes clear that St. Regis already had developed a 'customary' land holding system which recognized an individual Indians land rights.

²⁴ This is the earliest SRMT Recorded transaction given in the Traditional language at St. Regis. The reader must be cautioned that other records do exist that may be outside of the SRMT Clerk's Office.

²⁵ *Id.*

Distinguishing the

St. Regis Leases

First, as noted herein it is clear that as early as 1798 there is proof that certain lands of the St. Regis Indian Reservation were already 'under lease'.²⁶ This though has to be coupled with other related observations. For instance, and returning to the 1817 joint commission, as the Commission continued their survey work up the St. Lawrence River, Delafield's diary notes the following:

The St. Regis Indians claim title & give leases. The Chiefs having divided, however, part among the British & part among the Americans, throws their concerns into confusion and, as neither can agree, the rent is neither demanded by or paid to either."²⁷

This is further enlightened by the following in the Delafield Diary:

Louch has a lease from the St. Regis Chiefs in 1806 when they were united, and another lease of 1817 from the British Chiefs who have seceded, but is uneasy about his right of property or title.²⁸

These instances make clear that there was a discernible distinction made with respect to lands under the control of the St. Regis Indians. First, although individual St. Regis Indians could easily acquire control over a certain parcel by simply clearing, cultivating, and occupying a land parcel; 'another' aspect indicates that lands NOT under the control of individual St. Regis Indians were free to be 'leased'. In regards to this 'leasing' mechanism it is noted by Hough that:

On the approach of the war [of 1812], the situation of St. Regis, on the national boundary, placed these people in a peculiar and delicate position. Up to this period, although residing in both governments, they had been as one, and in their internal affairs, were governed by twelve chiefs, who were elected by the tribe, and held their offices for life.

*The annuities and presents of both governments were equally divided among them, and in cultivation of their lands, and the division of the rents and profits arising from leases, they knew no distinction of party.*²⁹ [emphasis added].

This reference is again repeated in Hough, wherein he records much of the same, but also adds:

²⁶ See, *supra* note 12.

²⁷ Delafield at 159, *supra* note 14. (Date of July 28, 1817).

²⁸ *Id.* at 171 (Book Two date of September 15, 1817).

²⁹ HOUGHS at 154-159.

Before the war, the *St. Regis Indians* were allowed to *hold, in common* with their brethren in Canada, *all the Indian lands*, and also to receive the rents and profits of them. Since the war, the British government refused them the privilege of even occupying the lands on the St. Lawrence River, in common with their brethren in Canada.³⁰ [emphasis added].

These observations clearly provide another unique twist to the Akwesasne land holding pattern: Prior to the war of 1812 there was one (1) Council in Akwesasne receiving and distributing the lease payments to ALL St. Regis Indians. As indicated, it appears that only war and the fluctuations of non-St. Regis governmental policy altered this fact.³¹

Yet, it would be the leases, and the lease payments, that would cause St. Regis much trouble in ensuing years.³² Included in these troubles was a subtle, but very important, distinction with respect to lands in the St. Regis Indian Reservation: Was it an individual St. Regis Indian who was making the lease to those portions of land which had come within their possessory interest, OR, was it the Tribe (via the Tribal Chiefs) that was in fact leasing the remaining 'common' and/or 'unoccupied' lands of the Reservation which had NOT been chosen and occupied by a St. Regis Indian? This trouble clearly persisted for some time for as Hough observed in 1852:

By an act passed April 27, 1841, the trustees of the St. Regis tribe duly elected, at a regular meeting, were authorized with the advice and consent of the agent for the payment of annuities, to execute leases to white persons for *any part of their unoccupied lands*, for any term not exceeding twenty one years, for such rents as may be agreed.³³[emphasis added].

Even with such dubious 'state granted' authority, it is clear that the only lands that would be covered were those for "unoccupied lands". Clearly meaning those lands not cleared and under the control of an Individual St. Regis Indian. This did little to quell issues surrounding these leases though, as Hough further observed:

The question of the propriety of this measure [land leases], has ever been a subject of contention and party strife among them, at their annual election of trustees. For several years, the party opposed to leasing land, has been in the ascendancy, and the measure has been discontinued.³⁴

³⁰ See, *Id.* at 168.

³¹ Clearly, through the operation of government and the passage of time would inure to the benefit of the person on St. Regis lands and not to the St. Regis Indians themselves.

³² See, HOUGH at 159-164.

³³ *Id.* at 171.

³⁴ *Id.* at 172.

In the post Hough period (1867) other reports made clear, and confirmed, that there existed on the St. Regis Indian Reservation a customary land holding pattern, inclusive of individual parcels and 'common lands'. Wherein:

This reservation includes, or presents, originated in the war of 1812-'15, and according as they or their ancestors declared their preference at that time. The distinction is kept up by inheritance from mother to child, according to the Indian custom. Each party is governed by a separate class of trustees or chiefs, and their domestic affairs are generally managed harmoniously. Although tenants in common, *it is customary for them to buy and sell improvements among themselves, and the conventional titles thus acquired are respected by common consent.*³⁵ [emphasis added].

Even in light of the 'customary consent' it appeared that the lease issue was not very far away, and that no easy solution was at hand as the topic appeared again in 1879 and 1888. First, in 1879 at the annual meeting of the Religious Society of Friends, noted the following with respect to St. Regis lands:

Portions of the lands belonging to the tribe are leased to white people by virtue of an act of the State of New York passed in 1841....They hold the land in common.... These elections are often conducted with much spirit, the Indians being divided chiefly of the propriety of leasing their lands.... Although the law recognizes no individual rights in the land, *custom has sanctioned*, in this as well as in the other New York Tribes, *the holding of lands for the exclusive benefit of families, and these rights are bought and sold among themselves.* Any Indian may consequently appropriate for cultivation so much of the wood-land as he chooses, provide he clears and occupies it, and the improvements on the land he thus takes up he may rent to others of the tribe. Indians may pasture upon the unenclosed land as many cattle as they please, there being no limitation as to number: *it is said white people frequently hire the privilege of pasturage on the common, paying the chiefs or trustees a small compensation for it.* Every Indian of the tribe may cut as much wood on the Reservation as he wants for his own use, or desires to sell, and within a few years large quantities have been disposed of.³⁶ [emphasis added].

These same occurrences were recorded just nine years later (1888):

They hold it in common [land] and seem to have no method of dividing in amongst themselves, but *each Indian takes as much as he wants, and in any locality he likes, occupies and cultivates, and it is his without further requirements.* They sometimes purchase of each other improved land...that *not actually occupied or cultivated [land] by*

³⁵ See, NY Office of the Secretary of State, June 25, 1867, Report on Indian Tribes in the State.

³⁶ See, A BRIEF SKETCH OF THE EFFORTS OF PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS TO PROMOTE THE CIVILIZATION AND IMPROVEMENT OF THE INDIANS ALSO OF THE PRESENT CONDITIONS OF THE TRIBES IN THE STATE OF NEW YORK. 39-43. (Friends Book Store 1879)(1866).

*the Indians is termed common land and is used as pasturage. Some of it is used for pasturage by white people, who pay the trustees of the nation rent therefor [Sic]...*³⁷ [emphasis added].

The foregoing clearly shows that there existed both a customary 'land holding pattern' by individual St. Regis Indians on the St. Regis Mohawk Indian Reservation AND a mechanism by which leases were entered into for certain St. Regis Indian Reservation lands. Those leased lands would be those which were not cultivated and/or occupied by an individual or family of St. Regis Indians. Most often described as common lands. This custom of individual St. Regis Indian allotments versus leases is clearly contrary to the last report (1888) alleging that there did not appear to be a method of land division. Yet, even in light of this, these customs were under constant attack by the state of New York during the 19th Century.

NEW YORK STATE LEGISLATION

Respecting St. Regis Land Holdings

The civil code of the St. Regis Mohawk Tribe, under the section titled "Applicable Law", provides for the following:

[B] Principles of New York State law for resolving private civil disputes *are not automatically applied* in Mohawk Courts. Principles of New York State law for resolving a private civil dispute may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no other controlling principle of Mohawk law; (ii) application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties.³⁸ [emphasis added].

The SRMT Court finds that the following is intended with respect to the language used within the SRMT TCR 2008-19, Civil Code, [hereinafter SRMT Civ. Code] with respect to land disputes on the SRMIR.

In 1777 New York State made as part of their State Constitution that no one³⁹ could purchase 'Indian Lands' without the consent of the State legislature. This is NOT what we are

³⁷ See, NYS Legislature, Assembly "Report of Special Committee to investigate the Indian problem of the State of New York, Appointed by the Assembly of 1888" Troy Press Co. 1889, at pages 56-58.

³⁸ See, SRMT Civ. Code] §V (B).

³⁹ Really meaning a white male freeholder of property.

concerned with here. For our review we are concerned with issues affecting the land holding pattern of the Indians on the St. Regis Indian Reservation. As such, the earliest NY State legislation effecting St. Regis can be seen in 1802, wherein:

And be it further enacted, That it shall and may be lawful for said tribe, at any such meeting aforesaid, to make such rules, orders and regulations, respecting the improvement of any of their lands in the said reservation, as they shall judge necessary, and to choose trustees for carrying the same into execution, if they shall judge such trustees to be necessary.⁴⁰

This 'pattern' of state legislation, while ignoring established customs on the St. Regis Indian reservation, would continue into modern times. In fact, much of the same language used in the 1802 Act would reappear in an 1813 act. The 1813 Act purportedly authorized the St. Regis Indians to have a Town Hall meeting on the first Tuesday of May, to choose a Clerk, to choose Trustees, to pass rules, orders and regulations respecting the improvement of their lands, and for the District Attorney of Washington County to bring suits on their behalf.⁴¹ The role of 'bringing actions' by a District Attorney was subsequently transferred to Franklin County in 1818.⁴² And this appeared to be in large part to assist the St. Regis Indians in collecting rents or removing trespassers.⁴³ Nonetheless, it is difficult to determine as to how this state legislation would attempt to alter what was already being described as certain customary practices of the Indians of the St. Regis Indian Reservation with respect to land holding.

This 'bringing of actions' clause appears to be at a tipping point during this period for in 1821 there was State legislation which made it unlawful for any non-St. Regis Indian to reside on the lands of the St. Regis Indians, and by the same act, nullified all leases which permitted non-Indians to reside on the lands of the St. Regis Indians.⁴⁴ It can be noted that in the same year there was one of the first reported Court cases with respect to the St. Regis Indians attempt to remove a non-native who apparently held lands under a lease.⁴⁵ They were unsuccessful in this regards, and this probably helped fuel the long vexing problem that we are forced to address today.

Throughout the 19th Century there continued to be numerous forays of New York state legislation with respect to land holdings on the St. Regis Reservation. By 1841 there was the

⁴⁰ See, NYS Act passed March 26, 1802, cited in Hough *supra* note 22 at 154. It can also be further noted that similar legislation was passed by NY with respect to Oneida, Brothertown, and Stockbridge Indians. See, "Laws of the Colonial and State Governments, Relating to Indians and Indian Affairs, from 1633 to 1831 inclusive". Washington City, Thompson and Homans 1832.

⁴¹ See, Laws of New York, 1813, Ch. 29 §§ 13, 14, 16.

⁴² See, Laws of New York 1818 Chap. 283 §2.

⁴³ There is no indication if 'self-help' was occurring at this point.

⁴⁴ See, Laws of New York 1821 (The actual workings allegedly permitted the Judge of the Court of Common Pleas to issue a warrant that was to be executed by the County Sheriff).

⁴⁵ See, *The St. Regis Indians v. Drum*, 19 Johns. 127 (N.Y. Sup. 1821) (holding that ALL agreements with Indians with respect to land are void and unenforceable pursuant to the State Constitution).

forementioned state legislation 'permitting' the trustees of the St. Regis Tribe to execute leases for the 'unoccupied portions' of the territory, for a duration of 21 years, and only with the consent of the state appointed Agent or the Franklin County District Attorney.⁴⁶ What is ironic, and as the history herein shows, the St. Regis Indians were already engaging in entering leases, and had collected the rents from these leases, which were subsequently equally distributed.

The foregoing would be followed by a more general law in 1849, which purportedly permitted all "nations, tribes or bands" within the State to divide their "common lands into tracts or lots". These 'now' divided lots would be given to the Tribal Nation members to be held in severalty and in fee simple⁴⁷, thereby it could be freely alienated by those Tribal Nation members, and hence no longer be considered 'reservation/treaty/Indian' lands.⁴⁸ This also ignored the fact that at St. Regis there already was an allotment process in place, and that a prohibition against alienation (sale) to non-natives was also in place. Had St. Regis engaged in the State created system it is probable that the St. Regis Indian Reservation could have ceased to exist.

The next State legislative effort originated in 1858 in a rather inconspicuous manner.⁴⁹ This act, in rather simple terms, permitted the Governor to appoint a Commissioner for the St. Regis Indians, who would then receive the annuity paid by the State, and then distribute the same to the "heads of families" at St. Regis. As this function (collection/distribution of the annuities) had already been addressed in other New York legislation prior to 1858, it is odd that it appears again. It would be one year later in 1859 that more legislation was added to the 1858 Commissioners role, and the motivation behind the 1858 Act becomes clearer.⁵⁰

As before, the Commissioner was not only to collect and distribute the annuities but added to this was the collection of lease rents for St. Regis. In addition, the Commissioner was to collect these rent monies "until the said lands shall be divided or apportioned". Next, the Commissioner was also to survey all lands of the reservation "held as common property of the said tribe, including all lands ...leased by said tribe...." Following this survey the Commissioner was to:

Divide such lands into tracts or lots and distribute the same to and among said Indians according to the best judgment of the Commissioner....⁵¹

After this allotment by the State appointed Commissioner, the St. Regis reservation lands were allegedly "to be held by the persons to whom they shall be set apart or apportioned, *in severalty*

⁴⁶ See, Laws of New York 1841 § 1, and as noted infra.

⁴⁷ Fee Simple is the most common term used in the United States signifying an estate in land without any limitations on it which gives the owner the absolute power of disposition.

⁴⁸ See, Laws of New York 1849 Chap. 420 §7.

⁴⁹ See, Laws of New York 1858 Chap. 368 § 1-3.

⁵⁰ See, Laws of New York 1859 Chap. 364 §4, 19.

⁵¹ *Id.* at §5.

and in fee simple according to the laws of this state.” When this was completed, the NYS Commissioner’s next role was to provide a certificate to each St. Regis Indian “describing the land”⁵² and that the person is “to have and to hold in severalty and fee simple”. This process;

When so executed, acknowledged, approved and recorded, shall have the effect to convey all the interest of said tribe, and the people of this state, in the lands therein described....⁵³

Other relevant provisions included § 10 which provided that “in all other respects the said lands shall descend and be inherited according to the general laws of this state.” The next section then provided that any St. Regis Indian receiving such land shall also “be entitled to all the civil remedies as between each other, and as against persons not members of the tribe, for trespass upon, and injuries to their lands and other property....” Perhaps most interesting to note is one of the last sections that provides:

All statutes now in force authorizing the appointment or election of trustees for the aid tribe, and all acts, and rules and regulations inconsistent with this act are hereby abolished.⁵⁴

Finally, § 19 of the act provided that:

No Indian shall be obliged to accept under the provision of this act the land allotted to him, and all Indians declining to receive certificates for such allotment shall continue as now, to hold their lands in common.

It appears this legislation went nowhere and by 1865 the State re-ratified most of the prior provisions of laws allegedly applicable to St. Regis and their lands.⁵⁵ For instance: Conducting an annual meeting and selecting one clerk and three trustees to hold office for one year. With respect to land, the Trustees were to have power to issue leases but only with the consent of the agent of the state, and only to one or more Indians of said Tribe for “any part or parts of unoccupied lands”, the leases could only be for 10 years, and the rents at this point were to be for “the general benefit of the tribe.”⁵⁶ For current discussions it is interesting to note that whereas on prior occasions the money was distributed among the families, in this instance, it was to now be retained by the Tribal Trustees.

Next in this New York legislative history is the Act of 1889, which seems to legislatively adopt the animosities developed from the War of 1812 at St. Regis. Wherein, “It shall be

⁵² There is no definitive proof that this may have created the current SRMT Use and Occupancy Deed system on the SRMIR.

⁵³ *Id.* at §8.

⁵⁴ *Id.* at §18.

⁵⁵ *See*, Laws of New York 1865 Chap. 346 § 1- §10. Another interesting facet of the law was §10 which provided:

“The power vested in said trustees by this act, may be exercised by them or any two of them.”

⁵⁶ *Id.* at §5.

unlawful for any member of the St. Regis tribe of Indians residing in the Dominion of Canada to settle or trespass upon the reservation of the St. Regis Indians situated in the State of New York....”⁵⁷ For whatever reason, this piece of legislation was accepted on the St. Regis Indian reservation and continued to persist well into the 20th century.⁵⁸

The next significant New York legislative event is what is commonly referred to as the “Whipple Report”, which produced the “Report of the Special Committee to Investigate the Indian Problem of the State of New York.”⁵⁹ The Committee pursued this as an investigation into the social, moral, and industrial conditions of the Tribes in which to ascertain the perceived best policy to be pursued by New York with respect to its ‘Indian Problem’. In no big surprise, the New York Legislative Committee advocated the abolishment of the Indian Reservations and the allotting of Tribal Lands to individual Indians in fee-simple.⁶⁰

Contemporaneously with the foregoing were efforts at the federal level to also allot and devise the lands of Indian Reservations to individual Indians. This is often referred to as the Dawes Act (1887).⁶¹ The unique facet of this effort was that it was never made applicable to those Tribal Nations located in New York. Therefore, St. Regis like the other ‘so-called’ New York Tribal Nations, were ‘exempted out’ of its application. As is clear from the foregoing though, was that New York was already making numerous attempts to do what was envisioned in the Federal 1887 Dawes Act.

A cursory review of New York laws will show that by 1909 nearly all prior enacted NY Legislation were reinstated. Many of which can still be found in Article 8 of the New York Indian Law.⁶² It is clear that the legislative forays by New York into the land holding patterns on the St. Regis Indian reservation not only ignored the existing customs and habits of the St. Regis Indians, but it also attempted to change the underlying title to those lands. It did this by attempting to ‘allot’ said lands, ‘devise’ the ‘allotted’ lands among the St. Regis Indians, and to declare that the said lands were to be now held in ‘fee simple’, thereby freely alienable to native and non-native alike, and where New York state law was to be applied.

As a cautionary tale, one should also not be lulled into believing that it was just the New York Legislature that was concerned with the land holding pattern on the St. Regis Reservation. As the next section will make clear, forays made via a New York Courthouse were also made, and have assisted in the ‘troublesome and vexatious’ land issues on the St. Regis Reservation.

⁵⁷ See, Laws of New York 1889 Chap. 554 § 1.

⁵⁸ This may be related to simple arithmetic. As indicated, since lease money was distributed between all members, limiting membership would ensure a bigger payment. Irrespective that during a prior period all was shared by all members.

⁵⁹ See, New York Assembly Doc. 51, Feb. 1, 1889.

⁶⁰ *Id.*

⁶¹ See, General Allotment Act of 1887, Dawes Act 24 Stat. 338.

⁶² See, New York Laws of 1861 Chap. 368, section 6, for reinstatement see New York Laws of 1909 Chap. 31, §125.

*State Litigation Involving the Land Holding Pattern
on the St. Regis Reservation*

As noted herein, as early as 1821 there was what is known in legal parlance a reported Court case with respect to the St. Regis Indians attempt to remove a non-native who apparently held lands under a lease.⁶³ They were unsuccessful in this regards, and this probably helped fuel the long vexing problem that we are forced to address today. Such an effort would be reversed 80 years later, when in 1901 a local press report indicated:

A law suit has been in progress for some time between an Indian, Peter Cook, and his mother, regarding possession and title to a small house and lot. Friday Constable Gratton and half a dozen Indians swooped down upon the place and drove Cook and his wife out of doors, likewise removed their furniture and provisions. Then they battered down the doors and windows, tore out the chamber floor and committed other unlawful acts. Cook and his wife were compelled to seek shelter at a neighbor's.⁶⁴

There does not appear to be any reported Court decision regarding this event, yet it does not appear that the foregoing was an isolated event. For example in 1877 another case was reported in the press involving two St. Regis Indians and the produce generated from lands on the St. Regis Reservation.⁶⁵ Similarly, the aforementioned leases also lead to litigation.⁶⁶ It should also be noted that these New York Courthouse experiences were conducted at a time when all Indians were not citizens of the United States.⁶⁷

Perhaps the most interesting of the St. Regis 'reported cases' can be highlighted by the 1909 case of *Terrance v. Crowley* and the 1916 case of *Terrance v. Gray*.⁶⁸ In order to appropriately understand these cases, one has to go back to an earlier time period.

It was reported that on Christmas Day 1906 three St. Regis Indians, Thomas Gray and his son Peter Gray, along with Louis Bero, traveled to Hogansburg. During their trip they consumed alcohol, and upon their return to the Gray Farm, an argument between the two Grays ensued and Peter murdered his father Thomas. There was an apparent dispute about the family farm.⁶⁹ Peter

⁶³ See, *The St. Regis Indians v. Drum* 19 Johns. 127 (N.Y. Sup. 1821) (holding that ALL agreements with Indians with respect to land are void and unenforceable pursuant to the State Constitution).

⁶⁴ See, ST. LAWRENCE REPUBLICAN, January 9, 1901. The article also notes that Constable Gratton had been in multiple scraps among the Indians, and on this incident an arrest warrant had been issued for him.

⁶⁵ See, FRANKLIN GAZETTE, December 14, 1877 (Case of *Jake Williams v. Charles White*, which was referred to the Indian Attorney).

⁶⁶ See, CANTON COMMERCIAL ADVERTISER, April-June 1907 (case involving *Mitchell Laughing, Sidney Grow, and Albert Brennan*).

⁶⁷ Something that would not occur until 1924.

⁶⁸ See, *Terrance v. Crowley*, 62 Misc. 2d. 138 (1909); See, *Terrance v. Gray*, 171 A.D. 11, 156 N.Y.S. 918 (1916).

⁶⁹ See, JOURNAL and REPUBLICAN, January 3 1907; NORWOOD NEWS, May 28, 1901.

was charged with murder, pled to a manslaughter charge, and was subsequently sent to prison.⁷⁰ During this period, or shortly thereafter, Peter Gray deeded the farm to Hattie White who eventually deeded it to George Terrance. All are St. Regis Indians.

After receiving these 'deeds', George Terrance attempted to use this property as security for certain transaction involving Michael J. Crowley and another St. Regis Indian, Alex White whom it is presumed was the husband of Hattie White. When certain payments were not made, litigation ensued.⁷¹ Eventually George Terrance would be put back into possession of the farm. Hence, the 1909 decision was filed. Matters did not stay calm for very long though.

Upon his release from prison Peter Gray sought to have the 'family' farm returned to him by 'terrorizing' Mr. Terrance.⁷² This would lead to litigation, and the reported 1915 case cited above. For current discussions, one of the interesting facts of the case is the Court recognizing that:

*There is nothing in the record to indicate that the St. Regis Indians in the state have divided their common property among the members of the tribe in severalty, and the court will take judicial notice of the fact that the tribe continues to hold its lands in common, and that the partition permitted by this section has not taken place.*⁷³ [emphasis added].

Therefore, the foregoing confirms that for all of the legislative and judicial forays into the land holding of the St. Regis Tribe, none were ever implemented to the point where they transplanted those customs and usages of the St. Regis Indians with respect to land holding. Furthermore, it is interesting to note that for all of the litigation that occurred, at the end of the *Terrance* case, the Court simply relied upon the allotment made by the "Chiefs of the tribe to the plaintiff [George Terrance]."

Next, although the foregoing cases appear to be the relative few 'reported cases' of the New York Courts, it was not the only cases to be reported. By 1928 the issue of the purported Canadian Indians would be the next issue. The Courts would appear to routinely authorize actions where what they believed to be non- 'American' St. Regis Indians could be forced to leave the St. Regis Reservation, even if they were members of the 'British' St. Regis Indians.⁷⁴ Similarly, the Court also has in its possession what appears to be a copy of a 1954 filing by the Franklin County District Attorney for the removal of William Hanson as an intruder on the St. Regis Indian Reservation.⁷⁵ These show that some New York judicial actions were requested

⁷⁰ *Id.* Unique in this regard was that all proceedings were in state court.

⁷¹ *See, Terrance v. Crowley*, at 138.

⁷² *See, ESSEX COUNTY REPUBLICAN*, August 20, 1915.

⁷³ *See, Terrance v. Gray*, at 918. For current discussions it can be noted that Peter's sister Hattie sold the property to the Plaintiff George Terrance, who had also paid Thomas Gray's widow and Peter Gray's wife for the estate.

⁷⁴ *See, In. Re Herne*, 133 Misc. 286 (1928) (Initiated for the removal of Mary Lazore).

⁷⁵ Dated July 16, 1954 complaint made by Henry A. Fisher.

and implemented at St. Regis, with some of these even at the request of the St. Regis Mohawk Tribe itself.

To this point it can be noted that New York has attempted legislative and judicial forays into the land holding on the St. Regis Reservation. For instance: In 1821 when the St. Regis Indians attempted to remove a leaseholder the New York Courts refused to entertain the action, and yet throughout the 1800's the State attempted to pass their own legislation with respect to St. Regis Lands, and by the 1900's New York Courts were now entertaining land dispute suits from the St. Regis Reservation and utilizing 'some' state laws to do so!

New York State Hybrid Approach:

The Indian Attorney

As indicated herein, it was reported in the local media on December 14, 1877, that a land dispute case involving Jake Williams and Charles White was referred to the "Indian Attorney"⁷⁶. This report shows the hybrid approach employed by the state from the 19th Century to the middle of the 20th Century. What this hybrid approach consisted of was a State appointed official allegedly acting in the role of agent or attorney on behalf of the St. Regis Indians. This agent/attorney would then purportedly be responsible to ensure that the St. Regis Indians received their lease payment[s]. This was deemed necessary as Indians were not citizens and therefore could not litigate in state Courts, and also the restriction stemming from the 1821 *Drum* case, which said that all Indian land contracts were null and void.

The 'role' played by this position is easily discernible in some of the early legislation cited herein, whereby in 1812 the District Attorney for Washington County had the responsibilities of initiating actions against trespassers on Indian lands. This responsibility was subsequently transferred to the Franklin County District Attorney in 1818. By 1861 New York Legislation was enacted to create the actual position of 'Indian Attorney' who had similar responsibilities contained in the District Attorney provisions as noted above.⁷⁷ Under the State legislation the Indian Attorney was also given an annual salary and was to be selected by the New York Governor for three year terms of office. Therefore, very often New York spending legislation contained provision for the salary expenditures associated with the 'Attorney for the St. Regis Indians'.⁷⁸ This 'Indian Attorney' position also survived New York's great 'Indian Law' revisions of 1890-1895, and of 1909, so that the position remained intact up to the 1950's.

⁷⁶ See, *supra* note 64.

⁷⁷ See, Laws of New York, 1861, Chap. 325.

⁷⁸ E.g. 1841, 1858, 1859, 1861, 1871, 1873, etc.

The persons who have filled this role of agent/attorney have been notable for a number of reasons, least of which is the geographic locations involved in the SRMT Land Claims litigation which bear their names. For instance, the mile square in Massena is actually the Hascall/Haskell mile square for Asa Hascall. Fulton's Woods is in the Hogansburg Triangle, and is for A. Fulton one time agent/ attorney for the St. Regis Indians. In 1920 Maurice Lantry of Bombay was appointed to the position, and was in all likelihood related to the Lantry who had business/trading interests within the Hogansburg Triangle. Perhaps the most famous of these was the person who was appointed on March 28, 1848: W.A. Wheeler. Mr. Wheeler at the time was District Attorney for Franklin County, and by March of 1877, was Vice President of the United States. Along this trajectory, Mr. Wheeler was also President of the New York Northern Railroad. There is some suggestion that this is the reason the railroad goes around the St. Regis Reservation. How effective these individuals were in performing their duties can be a matter of great debate, but in any event, it is clear that they played a role in the land holding history of the St. Regis Reservation.⁷⁹

What can be noted at this point is that it would not be until 1942 that these New York State forays would be questioned in Federal Court, upon which the Federal Courts rejected these New York forays.

FORNESS

The civil code of the St. Regis Mohawk Tribe, under the section titled "Applicable Law", provides for the following:

Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);⁸⁰

The SRMT Court finds that the following is intended with respect to the language used within the SRMT Civil Code with respect to land holding and land disputes.

⁷⁹ Adding to this debate would be the recognition that early land case litigation initiated by the St. Regis Indians never seemed to be initiated by these state appointed Indian Attorneys. *E.g. Deere v. St. Lawrence River Power Co.*, 32 F.2d 550 (2d Cir. 1929).

⁸⁰ *See*, SRMT Civil Code §V(a)(1).

On March 4, 1939 the Seneca Nation of Indians of New York, in response to the chronic non-payment of land leases, canceled all leases that were in arrears. Thereafter, the United States government on behalf of the Seneca Nation of Indians commenced proceedings to enforce the cancellation of the leases. These proceedings were initially opposed by the non-native leaseholders, one of whom was Frank Forness. After a decision at the Federal District Court an appeal was taken to the Second Circuit Court of Appeals, where another decision was rendered which was favorable to the Seneca Nation of Indians, and therefore, un-favorable to Frank Forness and the other lease holders. An attempt was then made to take appeal to the United States Supreme Court, which was denied, and thereby making the Second Circuit's *Forness* decision the 'law of the land' within the Second Circuits geographic jurisdiction, which includes New York. For current discussions the relevant language of the *Forness* decision is as follows:

But state law cannot be invoked to limit the rights in lands granted by the United States to the Indians, because, as the court below recognized, state law does not apply to the Indians except so far as the United States has given its consent.⁸¹

It was not long thereafter that the reach and effects of this decision were of a going concern to the state of New York. As a subsequent NYS legislative committee chair opined:

In that decision [*Forness*] it was stated that the laws of the state of New York have no force whatsoever upon Indians except as the United States Government has approved or consented or whatever term or words are used.⁸²

For current discussions though, it is only important to recognize the import that decision would have on St. Regis lands, or in more particular, what had occurred up to that point. As the foregoing makes clear, there had already been numerous New York state legislative, judicial, and executive forays into the internal affairs at St. Regis regarding the lands of the SRMIR. And, based upon the *Forness* decision these were without authority, including those with respect to the land holding system on the St. Regis Indian Reservation.

In response to the *Forness* decision New York very quickly, and simply, began the process of attempting to have the federal government grant jurisdiction over the Tribal Nations located in New York. These efforts begin in earnest as early as 1943 with the formation of a Joint Legislative Committee on Indian Affairs, which subsequently conducted hearings at the various Tribal Nations.⁸³ On September 8th, 1943 one such hearing was conducted at the Thomas Indian School on the Cattaraugus Reservation.⁸⁴ Although these discussions were

⁸¹ See, *United States v. Forness et al.*, 125 F.2d 928 (C.C.A.2d, 1942).

⁸² See, 1945 Legislative Hearing at note 65.

⁸³ August 4,5 at Salamanca, September 7,8 Cattaraugus, September 9,10 at Lewiston and Newstead, September 30 at Nedrow, October 1 at St. Regis, October 14 at Southampton and Mastic. See Report of the Joint Legislative Committee on Indian Affairs February 25, 1944. (Legislative Document No. 51).

⁸⁴ See, Joint Legislative Committee on Indian Affairs Public Hearing had at Thomas Indian School Cattaraugus Reservation, N.Y. Wednesday, September 8, 1945. Fred J. Koester Court Reporter.

primarily geared toward the Thomas Indian School, the Committee did not take long to bring up "the subject of this conflict of Federal and state jurisdiction"⁸⁵, which included a perception by the New York Committee of lawlessness, lack of education, and the bemoaning by state officials that everything has been thrown into disarray. In 1944 the following was included in the Committee's report:

And the limited civil jurisdiction of Federal Courts ... renders the latter practically unavailable for determination of controversies between individual Indians, and at the suit of Indians, against white men. Of necessity, therefore, Indians have litigated most of their civil disputes in State courts. An extreme application of the *Forness* case doctrine would deprive State courts of jurisdiction over many of these matters.⁸⁶

Similar language, if not simply self-fulfilling, was included in the Committee's 1945 report:

Many Indians as well as other students of their condition, have long believed that the moving force to accomplish these reforms, must come from without. A substantial number of Indians, including residents and non-residents of reservations, recognize the need and desire that laws confirming broad State jurisdiction be enacted promptly.⁸⁷

Up to this point there had been no discussions with respect to the land holding patterns on the Tribal Nation territories inclusive of St. Regis. In fact, it can be noted that at times the reports of the Joint Committee would be 'at odds' with people who testified in front of the Committee, or from presentations made to the Committee, on that very issue. For instance, at a January 4th, 1945 Committee hearing held at the Ten Eyck Hotel in Albany, the following portion of a letter was submitted from the U.S. Department of the Interior on the land issue and was read into the record:

But we believe that any such transfer of jurisdiction must be qualified so as to preserve the capacity of the Federal Government to take appropriate action for the protection of restricted Indian property and for the discharge of all treaty obligations.⁸⁸

Perhaps most telling was the opinion offered by a St. Regis Chief at the same hearing:

But coming to the civil affairs, according to this paper, it says that New York State will take over the jurisdiction in regard to civil affairs. *When we let the state have the jurisdiction of civil affairs, at that time ends all Indian government*, because the state will have both criminal and civil, -therefore why should we have that? I think we are going to have little difficulty in ironing out the civil affairs. One of the things is, if we let the state have jurisdiction, sometimes it costs us more money than the property is worth. In

⁸⁵ *Id.* at page 44, questions posed to Robert P. Galloway.

⁸⁶ *Id.* See 1944 Joint Legislative Cmte. Report at 4.

⁸⁷ See, 1945 Joint Legislative Cmte. On Indian Affairs March 15, 1945 (Legislative Document 1945, No. 51).

⁸⁸ See, Hearing before Joint Legislative Committee on Indian Affairs on Thursday January 4, 1945 at ten Eyck Hotel Albany New York, at p. 8, reading letter January 2, 1945 letter by Mr. Abe Fortas, Office of the Secretary of the Interior.

the past we have had to go to courts, and it cost us a lot of money. I am afraid you will have trouble in trying to get that through as far as getting the consent of the Indians to permit jurisdiction in civil affairs, because in that case if I have a dispute with one of my neighbors, we have nothing to say about it. The state courts handle it.⁸⁹

After proclamation by NY Assemblyman Wade that there would be no interference upon the Tribal Nation governments, Chief Joseph Solomon continued:

You come to the limit of our jurisdiction where the state begins. *We try to handle all civil affairs like land disputes on the reservation.*⁹⁰[emphasis added].

When NY Assemblyman Wade made further comment that "There is no intention to change the government."⁹¹ Chief Solomon further added with respect to land disputes going off the reservation:

In most cases they will not let it go out of the reservation into the state courts. That is where I think you will have trouble. My ideal is to make a better form of government on the reservation and work in harmony with the state and federal governments.⁹²

Nonetheless, the state persisted in their request to the Federal Government to get both civil and criminal jurisdiction. The first successful jurisdiction transference was the criminal piece that was passed on July 2, 1948.⁹³ With this transference the New York Legislative Committee continued to push for the civil jurisdiction piece. In this effort the 'prose' of the NY Committee Chairman Wade took a sudden right turn, as the 1950 Committee Report indicates:

Enactment [civil jurisdiction to NY] would end their long isolation and inevitably work towards complete assimilation with the main body of citizens.⁹⁴

Except in respect to nationality, inheritance and *land ownership*, New York Indians are conspicuously lacking in rules or customs to regulate ordinary civil relationships. Yet even in these three categories, existing governments are incapable of compelling respect for these traditions without assistance from State courts.⁹⁵[emphasis added].

⁸⁹ *Id.* at 51, Statement of Chief Joseph Solomon, Mohawk.

⁹⁰ *Id.* at 52.

⁹¹ *Id.* at 53.

⁹² *Id.* at 53-54.

⁹³ *See*, Public Law 881, 80th Congress, codified at 25 USC § 232.

⁹⁴ *See*, 1950 Report of the Joint Legislative Committee on Indian Affairs, Legislative Document No. 57, (1950), pg 3.

⁹⁵ *Id.* at 4.

The only significant changes to be expected from passage of the bills would be the positive ones of extending orderly processes of government to the reservations and of ending the power of individual Indians to avoid ordinary civil responsibilities.⁹⁶

How much longer New York Indians will be condemned to the stagnating and stifling effects of segregation depends upon how soon Congress will recognize the futility as treating them as independent, self-governing units which they long since ceased to be.⁹⁷

Clearly these comments are in stark contrast to the assurances made by the exact same Committee Member (NY Assemblyman Wade) to our Chief Solomon. In fact, Chairman Wade's comments reinforce the concerns of Chief Solomon uttered just 5 years earlier to the Committee; The destruction of the existing Tribal Government. Nonetheless, by September 13, 1950 the state was successful in acquiring the civil jurisdiction transfer.⁹⁸ The Joint Legislative Committee in their 1951 report announced the 'successful' legislative transfer, and from the report one can quickly ascertain that there was a new Chairman of the Committee.⁹⁹

For current discussions it is important to note that land disputes on Tribal Nation territories were NOT included within the civil jurisdictional transfer to New York:

The only apparent effect of this provision may be the unfortunate one of *barring State courts from handling private land disputes in which event most Indians will have no forum for the disposal of such cases.*¹⁰⁰ [emphasis added].

Nonetheless, other ulterior goals of the Committee would be noted in the report:

On a small scale New York is now faced with the same general problem of Indian assimilation that has never been satisfactorily solved by the Federal government.¹⁰¹

With respect to land, the Committee's other motives can be gleaned from the following:

Eventually, therefore, it is greatly to be *hoped that Indians will reach the point of desiring to hold their lands in severalty as do western tribes, and to abandon present restrictions against ownership by non-Indians, even at the cost of having all such lands bear a fair proportion of the tax burden.* Not until then will Indians complete the

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* at 6.

⁹⁸ See, Public Law 785, 81st Congress, Chap. 947, 2nd Session. Codified at 25 USC § 233, Jurisdiction of New York State courts in civil actions.

⁹⁹ See, Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1951) No. 66., submitted February 28, 1951 by Chairman William H. MacKenzie.

¹⁰⁰ *Id.* at 3.

¹⁰¹ *Id.* at 5.

transition from hermit hood to the vigorous and responsible citizenship assured by their intelligence, independence and courage.¹⁰² [emphasis added].

The Committee nonetheless would make intermittent 'requests' to acquire this unattained piece of jurisdiction with respect to land disputes.¹⁰³ Even with the 'civil jurisdiction' transfer, there still existed an unique 'carve out' in the law.

That provision provided that:

The governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to September 13, 1952, those tribal laws and customs which they desire to preserve....¹⁰⁴

Similarly, although this act permitted transference of civil jurisdiction, Courts were still free in "recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts."¹⁰⁵ It appears that only one Tribal Nation made any such filing to the Federal Government with respect to their laws and customs.¹⁰⁶ It is interesting to note that this provision has echoed through history to modern times where one Court recently held that:

While the federal statute shall not be construed 'to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts.'¹⁰⁷

In that case the Court recognized that:

Defendants [Harts] have not proffered any St. Regis Mohawk Tribal Law concerning liability for injured workers. Thus, we apply the civil laws of New York to this action.¹⁰⁸

For current discussions, where exactly on-reservation land disputes fit in to the overall legislative framework appears to be murky at best. What is ascertainable is that the land holding pattern on the St. Regis Mohawk Indian Reservation continued to exist, and that 'Tribal Council' remained very much the arbitrator of land disputes, and that the SRMT Clerk performed many of the administrative tasks associated with land holding on the reservation. Nonetheless, land dispute litigation originating from the St. Regis Indian Reservation was NOT included in the civil

¹⁰² *Id.* at 5.

¹⁰³ *See*, Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1959) No. 15, same in 1960.

¹⁰⁴ *See*, 25 USC § 233.

¹⁰⁵ *Id.*

¹⁰⁶ *See*, 1953 Report of the Joint Legislative Committee on Indian Affairs, Legislative Document (1953) No. 74.

(The lone exception was the Seneca Nation of Indians which proffered its constitution).

¹⁰⁷ *See*, *Alexander v. Hart* 884 N.Y.S.2d. 181 (2009) (concerning worker's compensation case originating from the SRMIR).

¹⁰⁸ *Id.* at 183,184.

jurisdictional transfer to New York. Therefore, and pursuant to *Forness*, no state legislation prior to 1942 would be applicable to St. Regis. This though, can leave many issues unanswered.

In more recent times on the 'Rez' it is somewhat fashionable to blame just the St. Regis Mohawk Tribe for the perceived deplorable status of the land holding mechanism in place. It is hoped that the foregoing adequately shows that such blame can be spread out over a much broader base. Clearly there was a number of contributing factors over a sustained period of time: In the 19th Century New York's legislative efforts were an attempt to divest the lands of the St. Regis Indian Tribe, and if those had been successful, it would have resulted in divesting individual St. Regis Indians with the customary use of the lands in the St. Regis Mohawk Indian Reservation. Couple that with sporadic lawsuits resulting in mixed findings, and 'wild-cat' law enforcement efforts (e.g. Gratton), and the deplorable state that SRMT land holdings may best described as the by-product of New York State efforts. Finally, the *Forness* decision clearly rejected these efforts, and the State thereby doubled its efforts to acquire jurisdiction through federal legislation. But clearly exempted out from this legislation were land disputes on the St. Regis Indian Reservation.

Nonetheless, it can be stated to this point that any observation and/or description of both the land holding patterns and land dispute mechanisms on the St. Regis Indian Reservation, engenders much controversy and hard feelings by members and residents of the St. Regis Mohawk Indian Reservation. Considering the history up to this point, should anyone be surprised that such a "troublesome and vexatious" history of these issues has surely led to such a result. Clearly it is reaping what has been sowed. Similarly, complaints and accusations have also been made against the land holding and land holding dispute mechanism on the 'Rez.' Accusations of favoritism, nepotism, fraud, and theft, are not uncommon and persist to today. How much of this is rooted in fact versus either a failure to properly execute decisions, or to have such decisions politically respected and executed, is unknown. Nonetheless, as described herein, there exists on the St. Regis Indian Reservation a customary land holding mechanism by and between individual St. Regis Indians.

Change has occurred though, and based upon the rather unique history noted so far, it may be surprising to discover that this change has originated from within the St. Regis Indian Reservation itself and not from outside the St. Regis Mohawk Indian Reservation.

AMENDING ST. REGIS MOHAWK TRIBAL LAND DISPUTE RESOLUTION PROCESS

The civil code of the St. Regis Mohawk Tribe, under the section titled "Applicable Law", provides for the following:

Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe....¹⁰⁹

The SRMT Court finds that the following is intended with respect to the language used within the SRMT Civil Code as it relates to land disputes.

As indicated herein, there has been a multitude of New York State legislation with respect to land holding on the St. Regis Indian reservation. By the time the Federal transference of jurisdiction was completed (1947-1952) though, the basic parameters of the SRMT system still remained intact. This can be summarily described as such: SRMT members for some time now occupy certain land parcels which they are free to devise of in whatever manner they see fit, over time they are issued 'use and occupancy' deeds which are endorsed by the Chiefs of the SRMT, and the use and occupancy deeds also have affixed to them the SRMT Clerk's signature, and these use and occupancy deeds are recorded at the SRMT Clerks office. Disputes between SRMT members and residents were decided by the Chiefs of the SRMT. Where all of this originated from is unclear, but it is certain that aspects of it originate in the history and customs of the St. Regis Indians. Nonetheless, there has been sufficient criticism of that system that change was called for, and perhaps a movement towards Chief Solomon's 1945 position: "My ideal is to make a better form of government on the reservation and work in harmony with the state and federal governments."¹¹⁰ This change has resulted in the implementation of a SRMT Court, creation of a Land Dispute Tribunal, and the passage of a SRMT Land Dispute Ordinance.

Some change was begun in 1987 and again in 1995 when the Saint Regis Mohawk Tribe went through a period of attempted political structural changes.¹¹¹ During this time there was an attempt to establish and implement an SRMT Court. This was unsuccessful though. Nonetheless a SRMT Tribal Court Program has come a long way since 1987 when committees were first formed to plan, draft laws, and seek funding.¹¹² By 2005 community referendums were conducted and the community approved the creation of a SRMT Court system. By 2007, all the members of Tribal Council, as per the 2005 community referendums, signed a resolution recognizing "the Tribal Court system as an independent decision-making entity with independent

¹⁰⁹ See, SRMT Civil Code §V (a)(2).

¹¹⁰ See, Hearing before Joint Legislative Committee on Indian Affairs on Thursday January 4, 1945 at ten Eyck Hotel Albany New York, at p. 8, reading letter January 2, 1945 letter by Mr. Abe Fortas, Office of the Secretary of the Interior at 53-54.

¹¹¹ This included the attempted passage of a SRMT Constitution that resulted in numerous lawsuits and the end of which was a subsequent roll back of those efforts, which resulted in a return to the pre 1994 structure which resembles in large part that established via New York legislation.

¹¹² See generally, SRMT TCR-87-8, Judicial Committee to Draft Legal Codes; SRMT TCR 1989-16 Akwesasne Funding Committee BIA Funding Request; SRMT TCR 90-32 Grants for Law Enforcement and Tribal Court; TCR 91-14 Grant for Start of Tribal Court; SRMT TCR 92-122 -92-123 Tribal Courts Contract.

judicial authorities".¹¹³ This has resulted in the establishment of the current existing Court which is addressing this case, and is the rare instance of a government institution actually being created and approved by the St. Regis community itself, versus that initiated by New York legislation.

In conjunction with the effort to establish a Tribal Court there has been attempts to amend and reform the land holding and land dispute resolution system on the St. Regis Indian reservation. Part of this attempted change included the enactment of SRMT Tribal Council Resolution¹¹⁴ 95-11, titled the Lands and Real Property Act of 1994 [hereinafter cited SRMT TCR 95-11]. The purpose of this act was to provide SRMT requirements for the control, allotment, use, transfer and disposition of all lands subject to the jurisdiction of the SRMT. Under this ordinance, a panel of three land examiners, consisting of the Tribal Clerk, Tribal Council, and the Tribal Court, heard land disputes and made a recommended decision, which was sent to the Chief Judge for endorsement as a proposed final order, or for further hearing.¹¹⁵ A final order was not effective until countersigned by 3 or more members of Tribal Council who could for good cause adopt, modify or reject the Court's final order. Pursuant to TCR 95-11, the decision of the Tribal Council was final and future Tribal Councils were not to re-hear previously decided cases absent a showing of fraud, violation of the Elder Care Act, or an affirmative finding of manifest injustice.¹¹⁶ As indicated, the application of this act is subject to much questioning, and by and large matters have returned to the pre-1995 system described above. This is particularly true in light of the 2005 and 2009 referendums.

Another subject area of much discussion has been the occurrence of land disputes settled by prior SRMT Councils being brought anew to a currently sitting SRMT Council, who sometimes overturned, overruled, or altered a previous decision[s]. That factor, coupled with much of what has been described so far, caused the initiation of an effort to de-politicize and finalize land disputes. At which point the SRMT Council consulted with the St. Regis Mohawk community to determine a way to improve how land disputes could be resolved within the Saint Regis Mohawk Indian Reservation.

In addressing this issue, the Saint Regis Mohawk Tribe (SRMT) conducted several public meetings that shaped the development of what would become the current Land Dispute Resolution Ordinance and lead to another referendum on who should decide tribal land disputes. The first of these public meetings was held on March 11, 2009, and by June 6th, 2009 another referendum was conducted. On June 6th, 2009, the SRMT held its annual election, and in addition to the election of new Tribal Chiefs, community members voted on the following referendum question:

¹¹³ See, SRMT TCR 2007-01, Authority of the Tribal Courts System; *see also*, SRMT TCR 2005-35 Tribal Referendum on Tribal Courts; SRMT TCR 2005-64 Referendum on the Tribal Family Tribal Court.

¹¹⁴ Often referred to as TCR's.

¹¹⁵ See, SRMT TCR 95-11 at § 20-21.

¹¹⁶ *Id.*

“Do you want tribal land disputes to be decided by the tribal court?”

If the issue passes, that will mean the Tribal Court will make the final decision on land disputes and an ordinance will be developed and adopted accordingly.

If the issue does not pass, that will mean the Tribal Council will continue to make the final decisions on land disputes.¹¹⁷

Community members participating in the referendum approved the Tribal Court as the entity to issue final decisions on land disputes; and, they approved the development and adoption of a land dispute ordinance by a margin of 388 to 151.¹¹⁸

On December 3rd, 2009 the Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance (Amended by SRMT TCR 2011-20 Land Dispute Resolution Ordinance)¹¹⁹, [hereinafter SRMT LDRO], which created a Land Dispute Tribunal, composed of community members, and delegated to it authority to resolve land disputes to the Land Dispute Tribunal and the Tribal Court. Wherein, the SRMT LDRO provides:

The Tribal Council is vested with the authority to control the use of lands on behalf of the tribe and has customarily been responsible for resolving land disputes and the Reservation. Pursuant to the referendum held June 6, 2009, this authority is hereby delegated to a Land Dispute Tribunal and the Tribal Court, which shall have the authority to render final decisions. (SRMT LDRO §II).

The 2009 SRMT LDRO also established a Land Dispute Tribunal, defined criteria for Tribunal members, and the length of each member’s appointment.¹²⁰ It is also important to note that the SRMT LDRO not only provides delegated authority to the Land Dispute Tribunal, it also lays

¹¹⁷ See, "Saint Regis Mohawk Tribe | News." *Tribe Schedules Referendum Vote and Public Meetings*, 6 May 2009. Web. 22 Nov. 2011. <<http://srmt-nsn.gov/news/archived/2009>> [emphasis added].

¹¹⁸ See, "Saint Regis Mohawk Tribe | News." *St. Regis Mohawk Tribal Election Board Announces Official Election Results | Home*. SRMT, 12 June 2009. Web. 22 Nov. 2011. <<http://srmt-nsn.gov/news/archived/2009>>.

¹¹⁹ SRMT TCR 2011-19, Land Dispute Resolution Ordinance (Amends SRMT TCR 2009-69). After the Tribunal completed its first full year in existence, Council enacted the following amendments to improve the Ordinance: Amendments included such things as adding alternatives, procedures to allow for Tribunal members whose terms have expired to serve until reappointed or replaced, and providing clarification on who may remove a Tribunal member. (See, §§VII(D)(1);(D6);(D10)) In addition, the Amendment clarified the duties and expectations of the Tribal Clerk in fully researching and providing information filed in the Tribal Clerk’s Office. (See, §VIII(B)(5)-(6)). Responsibility is on the Complainant to provide valid address for the respondent (See, §VIII(D)). Service of Notice was clarified and added was that if the Tribal Clerk could not effectuate service within 30 days, a notice in a newspaper would effectuate service. (See, §VIII.F). Service of Process was extended from 10 to 30 days public notice period. (See, §X(A)). Issuance of deeds was clarified in that deeds shall only be issued when all judicial remedies have been exhausted. (See, XIII.D.6H).

¹²⁰ See, SRMT LDRO § VII.

out the procedure for resolving land disputes,¹²¹ and provides the Land Dispute Tribunal with the applicable law to be used in resolving all disputes that come before them.

Pursuant to the SRMT LDRO the SRMT Court may hear land dispute cases on appeal from either: A Tribunal decision or a Council decision.¹²² In each of these, the standard of review to be used by the Tribal Court is different:

The Tribal Court will review the [Tribunal Decision] appeal *based upon the record developed before the Tribunal*. The Tribal Court may affirm the decision or may vacate the decision and substitute its own decision, which shall be final and not subject to appeal.¹²³ [emphasis added].

With respect to Council decisions:

The Tribal Court shall *take a fresh look at* land dispute decisions rendered by Tribal Council and may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision, which shall not be subject to appeal.¹²⁴ [emphasis added].

The SRMT Tribal Court, pursuant to the LDRO, acts as a court of last resort in that there is no appeal to the Tribal Court of Appeals.¹²⁵ As a Court of last resort, the Court must be diligent in addressing errors and insuring that the possessory interests of all parties are equally heard and protected.

The passage of the SRMT LDRO would mark the second instance in which the land holding pattern on the St. Regis Indian Reservation was implemented not from sources external to the reservation, but rather, from the community itself. With the SRMT Court being the other part developed by the St. Regis Indian Reservation Community. The creation of the SRMT Court and the passage of the SRMT LDRO are not the only matters which the Court must address in deciding land disputes on the St. Regis Indian Reservation.

Other SRMT Laws Relevant to Land Issues

In 2008, the SRMT Court, as part of its development, requested from the SRMT Tribal Council that a certified copy of the laws the SRMT Court is to utilize be sent to the Court. The Court received a bundle of certified laws, which included the following:

SRMT TCR 2008-16 Rules of Civil Appellate Procedure;

¹²¹ See, SRMT LDRO § III.

¹²² See, SRMT Land Ordinance XV (B)-(C).

¹²³ See, SRMT Land Ordinance § XV (B).

¹²⁴ See, SRMT Land Ordinance § XV (C).

¹²⁵ *Id.* § XV (D).

SRMT TCR 2008-17 Rules of Evidence;
SRMT TCR 2008-18 Attorney Practice Requirements;
SRMT TCR 2008-19 Civil Code;
SRMT TCR 2008-20 Rules of Civil Procedure;
SRMT TCR 2008-21 Court Filing Fees [Amended 2010-40]; and
SRMT TCR 2008-22 Tribal Court and Judiciary Code [Amended 2012-15].

In 2009, the Court received a certified copy of:

SRMT TCR 2009-51 Animal Control Ordinance [Amended 2011-19], and
SRMT TCR 2009-69 Land Dispute Ordinance [Amended Apr. 14, 2011].¹²⁶

Most noteworthy for current discussions, and as we have cited herein, is that SRMT TCR 2008-19 Civil Code (hereinafter SRMT Civ. Code) specifically lays out, in a hierarchal fashion, the choice of law to be applied by the SRMT Court. In the words of the SRMT Civ. Code:

Civil disputes over which the Tribal Court has jurisdiction shall be decided by the Court in accordance and by applying the following principles of law in the priority and precedence in which the principles of law are first identified below higher priority and precedence being accorded those identified earliest in the list, so that in the event of inconsistency or conflict between principles of law, the principle of law identified earlier in the list shall be relied upon as the controlling principle for deciding the dispute....¹²⁷

The SRMT Civ. Code then gives precedence to those first appearing in the list and the Court must first determine by examining §V(A)(1)-(6) of the SRMT Civ. Code, in sequence, which law is controlling in any case which comes before the court.¹²⁸ This provides:

[1.] Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);

[2.] Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe;

[3.] Unwritten Mohawk laws, and (*written and unwritten Mohawk customs*), traditions and practices; [emphasis added]

¹²⁶ SRMT laws can be found at the Court's webpage. See, http://www.srmt-nsn.gov/divisions/justice/tribal_court.

¹²⁷ See, SRMT Civ. Code §V, Applicable Law.

¹²⁸ See, SRMT Civ. Code § V (A) (1)-(6).

[4.] Generally recognized principles of the law of contracts as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine;

[5.] Generally recognized principles of the law of torts, as reflected by the most recent Restatement of Torts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine;

[6.] New York State law (but only if) consistent with principles of Tribal sovereignty, self-government, and self-determination and it is consistent with the aforementioned. (*See*, SRMT Civ. Code at § V (A) (1)-(6)).

Therefore, as the foregoing makes clear, it is not a single law that must guide this Courts approach to any case, including land disputes, it could be a combination of the foregoing that must guide the Court. This approach, as required by the laws given to the Court, must be the one that is used. The SRMT Court, created by referendum vote on the St. Regis Reservation, does not have the option to ignore the laws given to it by the Nation which created it.

Next, within the SRMT Civ. Code it is clear that there is NO automatic application of New York Law. As provided:

Principles of New York State law for resolving private civil disputes *are not automatically applied* in Mohawk Courts. Principles of New York State law for resolving a private civil dispute may be applied in Mohawk Courts for the purpose of resolving a private civil dispute over which the Mohawk Court has jurisdiction if (but only if) the Mohawk Court finds: (i) there is no other controlling principle of Mohawk law;(ii) application of the New York State law is consistent with principles of Tribal sovereignty, self-government, and self-determination; and (iii) application of the New York State law is in the overall interest of justice and fairness to the parties.¹²⁹

This process provided in the SRMT Civ. Code can lead to conflict with cases already decided by Courts external to the St. Regis Reservation. By way of example, one can consider the aforementioned case of *Terrance v. Crowley*.¹³⁰ The Court deciding *Crowley* included the following:

The lands of the St. Regis are in a reservation and still belong to the state of New York.¹³¹

This language has been often repeated in numerous pieces of New York legislation, New York Legislative reports, and New York Court decisions. It has been uttered so often that even

¹²⁹ *See*, SRMT Civ. Code, V (B).

¹³⁰ *See, supra* note 68.

¹³¹ *See, Strong v. Waterman*, 5 Sarat. Ch. Sent. 13 (Sup. Ct. 1845), rev'd, 11 Paige Ch. 607 (Ch. Ct. 1845);

newspaper articles and historical works repeat it. There is one problem though, it is in all likelihood not true, and is contrary to stated positions of the St. Regis Indians, Federal Indian Law, and some findings made by federal courts.

As the St. Regis Mohawk Tribe finds itself in the midst of its own protracted land dispute litigation involving New York, it is interesting to note that a United States District Court addressing those issues had this to say with respect to the St. Regis lands:

In deciding whether the tribal plaintiffs had abandoned their homeland so as to preclude recovery, this court in *Cayuga Indian Nation of New York v. Cuomo* ...distinguished between aboriginal and recognized title. 'Aboriginal title' connotes rights deriving from ancestral use. Thus, 'an Indian tribe obtains aboriginal title in land when it continually uses and occupies said property to the exclusion of other Indian tribes or persons... On the other hand, 'where Congress has, by treaty or statute conferred upon the Indians the right to permanently occupy and use land, then the Indians have a right or title to that land which has variously been referred to ...as 'treaty title', 'reservation title', 'recognized title', and 'acknowledged title.'" [citations omitted]¹³²

Nowhere in the foregoing does the Court make any allusion to New York having the underlying title to the lands of the St. Regis Indian Reservation, thereby depriving the St. Regis Indians of aboriginal/ treaty/ reservation/ recognized/ or acknowledged title to the St. Regis Indian Reservation. If New York in fact had title this would also deprive the individual members and residents of the St. Regis Mohawk Indian Reservation the customary use of their territory as has been historically enjoyed. Whereby, the New York laws determined to be inapplicable under *Forness* would now be applicable.

In fact, the aforementioned United States District Court was not addressing anything new as another Federal Court in 1927 had this to say with respect to a land dispute incident involving a St. Regis Indian:

The source of title here is not letters patent or other form of grant by the federal government. Here the Indians claim immemorial rights, arising prior to white occupation, and recognized and protected by treaties between Great Britain and the United States and between the United States and the Indians.¹³³

In addition to these cases, we remain mindful of the missing jurisdictional piece that was not granted to New York State under federal law, land disputes on the reservation.¹³⁴ Therefore, as the foregoing makes clear, although the State of New York may feel it has the underlying title to

¹³² See, *Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York*, 278 F. Supp.2d 313, 43, 344 (N.D. N.Y. 2003).

¹³³ See, *Deere v. New York*, 22 F.2d. 851 (2d Circ. 1927).

¹³⁴ See, 25 USC § 233, and *supra* note 78-106.

the lands of the St. Regis Reservation, they are the only sovereign with such a feeling. Both St. Regis and the United States government have found otherwise.¹³⁵ This is not the end of our inquiry though, and the purpose in which to address this issue.

As provided above, the inquiry the Court must undertake does not cease at a recitation of case law decided by other sovereigns. The steps which this Court must follow are provided for in the laws given to the Court, the SRMT Civ. Code. That is what must govern, and therefore is what this Court must follow. As such, this Court must first look at the SRMT Civ. Code which provides:

[1.] Such portions of the Constitution of the United States and federal law are clearly applicable in Mohawk Indian Country (with great weight given at all times to principles of the United States Constitution and federal Indian law which recognize Indian sovereignty, self-determination, and self-government, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and which provide rules of legal interpretation favorable to Indian tribes);

A careful reading of this provision is in order. As provided, only "Such portions" of the U.S. Constitution and Federal Laws apply when it is clear that they are to apply. Given the U.S. Constitution's general applicability it is uncertain as to which portions of it would be 'clearly applicable' to Mohawk Indian Country. Particularly with respect to land disputes.¹³⁶ What can be noted is that by its plain terms the U.S. Constitution addresses 'Indians' in only three instances: Twice in what is known as the apportionment clauses, and once in the commerce clause.¹³⁷ In each of those clauses the terms do not specifically identify Mohawk Indian Country, but Indians in the general sense of the word. This is not to say that all of the other provisions of the U.S. Constitution will never apply in Mohawk Indian Country, for such a determination can only be made when such a controversy is before this Court, and when a party before this Court wishes to invoke such provisions. This simply means there is no automatic application of such provisions in SRMT Court with respect to land disputes. To do so would ignore the "clearly applicable" requirement contained in the SRMT Civ. Code. Therefore, any party before the Court seeking to have the U.S. Constitution or Federal laws applied would have to request such application, as provided for in the SRMT Civ. Code.

¹³⁵ See, also letter from Interior/BIA to NY Indian Commission confirming the restricted status of St. Regis lands as provided *supra* NOTE 86 herein.

¹³⁶ And furthermore, as indicated herein, land disputes are not subject to NY Jurisdiction pursuant to federal law.

¹³⁷ The apportionment clause is with reference to how (and if) Indians are to be counted for enumeration of population, and therefore, inclusion or exclusion for counting of the number of Representatives in Congress. As originally ratified, Indians were NOT counted as citizens, and therefore were NOT to be counted. The Commerce clause reserves to the Federal Government ONLY the power to trade and deal with foreign countries, which Tribal Nations were to be considered.

In either event, this Court is given further guidance in the SRMT Civ. Code and the inquiry that must be made in determining whether to approve the application of either the U.S. Constitution or Federal Laws to Mohawk Indian Country. Wherein the SRMT Law provides that:

With great weight given at all times to principles of the United States Constitution and federal Indian law *which recognize Indian sovereignty, self-determination, and self-government*, which render many federal and state laws inapplicable to federal Indian Country, which provide for a federal trust responsibility to Indian tribes, and *which provide rules of legal interpretation favorable to Indian tribes.* [emphasis added]¹³⁸

Therefore, even if a party wishes to invoke either a portion of U.S. Constitution or Federal Indian Law[s], such request then must be compared to, and be in furtherance of, *Indian sovereignty, self-determination, and self-government, and only those sections can be applied that provide rules of legal interpretation favorable to Indian tribes* may be applied here in 'Mohawk Indian Country', via the approval of the SRMT Court to cases before it. This, as provided for in the SRMT Civ. Code, is what the SRMT Court must follow.

Next, it must also be noted that nowhere in the foregoing provision is the SRMT Court mandated and/or required to simply follow federal case-law.¹³⁹ In its simplest definition, such decisions are just reflections of those Courts interpretation of either the U.S. Constitution or Federal Laws that were in controversy before those Courts. Nowhere in the SRMT Law is that issue addressed, and this Court in light of the foregoing, cannot make 'automatic application' of such decisions. The SRMT Law leaves the SRMT Court no such authority to do so. This though, does not mean that such decisions can never be raised in SRMT Court, as any party wishing to rely on such decisions can request that SRMT Court consider and apply those decisions in Mohawk Indian Country. Say for example, by requesting that a certain Federal law be made applicable, but also that this case interpreting that Federal Law should be the one to be applied in 'Mohawk Indian Country' by the SRMT Court. But again, in deciding such a request the SRMT would have to follow the process and requirements described above.¹⁴⁰

Therefore, in the example we began with, should a party before the Court request that the *Crowley* case be made applicable in a land dispute case on the St. Regis Indian Reservation, we would: First, see that *Crowley* is a New York State Court decision which is not even identified as being 'applicable' in the SRMT Civ. Code. Next, any reading of the decision shows that it is contrary to *Indian sovereignty, self-determination, and self-government*, and it does not *provide rules of legal interpretation favorable to Indian tribes* because of its holding that New York has title to the lands of the St. Regis Indian Reservation. This would not lead to furtherance of Tribal Sovereignty, but in all likelihood lead to a diminishment of Tribal Sovereignty. Next, as indicated herein, *Forness* in 1942 provided that New York laws could not apply on the Tribal Nations. Since *Crowley* was decided in 1909 it would violate the holdings of *Forness*. Finally,

¹³⁸ See, SRMT Civ. Code § (A)(1).

¹³⁹ These are the reported decisions rendered by Federal Courts.

¹⁴⁰ Meaning would following such decisions *recognize Indian sovereignty, self-determination, and self-government, and provide rules of legal interpretation favorable to Indian tribes.*

although 25 USC §233 'granted' civil jurisdiction to New York, it is clear that reservation land disputes are not included in that jurisdictional transfer, thereby *Crowley* would be of no precedent in an action involving a 'Reservation' land dispute. *Infra*

Contrary to *Crowley*, would be the decisions of *Canadian St. Regis Band of Mohawk Indians ex. rel. and Deere*. An interpretation of these could potentially be favorable to *Indian sovereignty, self-determination, and self-government*, and it does *provide rules of legal interpretation favorable to Indian tribes*. Therefore, they could be potentially applicable to Mohawk Indian Country if requested by a party and as provided for in the SRMT Civ. Code which the SRMT Court must follow.

This provision though, is not the end of the inquiry that the Court must make. As indicated, the next couple of provisions in the SRMT Civil Code provided guidance to us in the instant matter. The next two provisions in the SRMT Civ. Code provide that the following should be applied:

[2.] Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe;

[3.] Unwritten Mohawk laws, and written and unwritten Mohawk *customs, traditions and practices;*¹⁴¹

Clearly, with respect to the pending issues, this is where the inquiry of the SRMT Court can begin. Again, this is buttressed by the fact that no party currently before the Court on the present matter has requested that the Court apply either a U.S. Constitutional provision[s] or Federal Law[s].¹⁴² And, it is clear that the land dispute case currently before the Court is subject to both of these SRMT Civ. Code provisions.

As indicated, there is a SRMT law directly on point covering the subject matter of the dispute between the parties: the SRMT Land Dispute Resolution Ordinance.¹⁴³ For current discussions it can be noted that various provisions of the Land Dispute Ordinance include a prohibition that a non-member cannot buy or hold lands on the St. Regis Reservation.¹⁴⁴ Clearly, this is simply codifying what is, or was, the recognizable custom of the St. Regis Indian Reservation prior to the enactment of the Land Dispute Ordinance. In addition, there is a provision with respect to 'intestate distribution' of lands on the St. Regis Reservation.¹⁴⁵ In reviewing the Land Dispute Ordinance though, it is still clear that not every legal issue is addressed, and in fact it may be impossible to address every issue that can arise in a land dispute

¹⁴¹ See, SRMT Civ. Code §V(A)(2)-(3).

¹⁴² Due to the nature of the action, a land dispute on the St. Regis Reservation, it may be difficult to find such law that is on point.

¹⁴³ SRMT TCR 2009-69 Land Dispute Ordinance [as Amended Apr. 14, 2011].

¹⁴⁴ See, SRMT Land Ordinance §V(C), General Provisions.

¹⁴⁵ See, SRMT Land Ordinance §V(E), General Provisions of Land Dispute Ordinance.

on the St. Regis Reservation. Nonetheless, it is clear that there is an adopted law of the SRMT addressing the issue at bar.

Next, as is also clear, in this decision it has been reviewed at great length what exactly can be included, to date, with respect to the “Unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices” involving the land holding pattern and land disputes on the St. Regis Indian Reservation.¹⁴⁶ As provided herein, it is clear that custom and “unwritten laws” on the St. Regis Mohawk Indian Reservation recognizes that: *“He who first cultivated a plot of ground becomes the possessor, and by this use gains a right to sell his privilege.”*¹⁴⁷, once in possession custom also recognizes that *“When an Indian is in possession of a piece of land he holds it as proprietor; no other Indian can take it from him. He may by custom transfer it to his heirs, or sell it to any number of the Tribe, but not to the whites.”*¹⁴⁸, and this custom, although contrary to ‘outside law’, is our custom provided for in SRMT Law. As summarized reservation lands are those: *“which by the right of occupancy have come to be considered the private property of individuals, and as such are bought and sold among the natives, although the law recognizes no such private ownership, and holds them all as tenants in common, denying them the right of buying or selling land, except to the government”*¹⁴⁹ Therefore, the SRMT Court must look first to the SRMT Land Dispute Resolution Ordinance in conjunction with the SRMT Civ. Code. When those laws direct the Court to use unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices that is what the Court must do. Therefore, in this context custom does not require the sanction of another sovereign.

It must be further noted that the history included herein is not exhaustive. Clearly any party may wish to raise, invoke, or otherwise utilize, anything they believe to be a custom, tradition, or practice on the St. Regis Indian Reservation. This may include those more specifically associated with the facts involved in their specific case. Meaning, those customs, traditions, or practices involved in their own ‘private’ land dispute[s]. Nonetheless, it is hoped that the foregoing adequately provides to the respective parties involved in the case at bar the reasoning that the SRMT Court will follow, and to provide the applicable laws that the SRMT Court must first look to and apply.

II. PROCEDURAL HISTORY

Ms. Melody Point, on behalf of her mother Patricia I. White, filed an appeal with the SRMT Court against Ms. Ruth Peters on April 22nd, 2010 from a Tribal Council decision dated October 15, 2008. Ms. Point and Ms. White disagree with an October 15, 2008 Tribal Council decision,

¹⁴⁶ See, SRMT Civ. Code §V(A)(3).

¹⁴⁷ See, Major Joseph Delafield *supra* note 18 at 151.

¹⁴⁸ *Id.* at Appendix No. 6 Evidence of the Rev. J.X. Marcoux, Missionary, having reference to the Iroquois of St. Regis.

¹⁴⁹ See, HOUGHS *supra* note 22 at pg. 110,113.

which puts the boundary line of their respective properties, between the homes of Ms. White and Ms. Peters at 13 feet from Ms. Peters' house. Ms. Point and Ms. White further believes that a prior Tribal Council decision decided in 2000, correctly put that boundary line 4 feet from Ms. Peters' house.

Ms. Peters' answered this appeal, which was timely received on May 28, 2010. Ms. Peters stated that although she did not agree with Council's decision of 13 feet for the boundary, she was willing to accept it as a final decision. However, in light of the lawsuit, Ms. Peters is counterclaiming that the line should be set at 25ft from her home, and not the 4 feet from her home as requested by Ms. Point and Ms. White. (*See*, Ms. Peters Answer dated May 28, 2010).

After numerous pre-trial conferences, a Trial was set for October 5th, 2011 and a deadline was set for September 28, 2011, for the Parties to submit their witness lists. Ms. Point and Ms. White did not submit a witness list. Ms. Peters submitted a witness list to the Court on September 27, 2011. On September 29, 2011, Ms. Peters realized she had forgotten a witness and asked for the Court's permission to add her mother, Mary Allen, to the witness list, which the Court permitted.

Ms. Point and Ms. White and Ms. Peters were present at the October 5th, 2011 trial. Ms. Point and Ms. White did not call any witnesses. Ms. Peters called as witnesses: Ms. Debra Oakes a certified surveyor, Ms. Mary Allen, Respondent's mother, Mr. Norman J. Tarbell, and Mr. Mike Jock.

At the trial Ms. Peters informed the Court that two of her witnesses Mr. Carl Tarbell and Mr. David P. Printup were unable to appear due to one being sick and the other being out of town. As a result, the trial was adjourned till October 26, 2011 at which time Ms. Peters' remaining witnesses testified. This completed the trial of this matter and the Court now proceeds to decide the issue. Again the Court apologizes to the parties for the long delay in reaching this decision.

III. DISCUSSION

Pursuant to SRMT TCR 2009-69, Land Dispute Resolution Ordinance (Amended by SRMT TCR 2011-20 Land Dispute Resolution Ordinance) §V(B)¹⁵⁰, [hereinafter SRMT LDRO], and Saint Regis Mohawk Tribe (SRMT) TCR 2008-20 Civil Procedure Law the Plaintiff carries the burden of proof:

Unless otherwise provided by Tribal law, a party to a civil case shall be considered to have met the burden of proof by a preponderance of the evidence standard. This shall mean the necessary party met the burden of proof by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. ((XX (B))).

"He who pleads must prove."¹⁵¹ Appellant's, Ms. Point and Ms. White, have the burden moving forward of proving that the 2000 Tribal Council decision setting the border between the parties

¹⁵⁰ "The party initiating a land dispute shall carry the burden of proof throughout the entire proceeding."

¹⁵¹ *Actori incumbit onus probandi*. The burden of proof is upon on the Plaintiff.

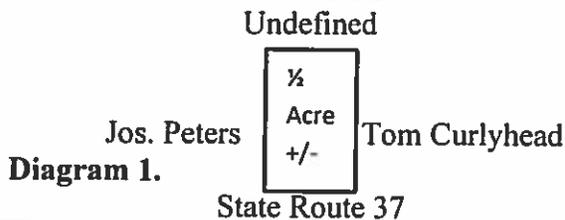
should be set at four (4) feet from the Appellee's Ms. Peters' house; rather than the 2008 decision setting the boundary at thirteen (13) feet. Since Ms. Peters counterclaims that the boundary between the properties should be set at twenty five (25) feet from her home, she therefore also has a burden to prove her claim. (*See*, Peter's Ans. dated 5-26-10)

Deciding land disputes in Akwesasne is a complex and difficult task, and one that the SRMT Court undertakes with great seriousness. While expediency is often mistaken for efficiency, the Court believes that thoroughness is the key to justice. This fact is heightened in the cases presented to the SRMT Court, as the SRMT Court is a Court of last resort for cases involving land disputes under § XV(D) of the SRMT LDRO.

Factual Background

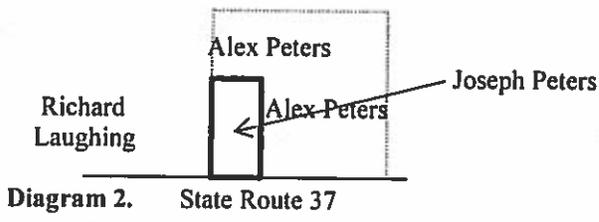
With respect to Ms. Peters, the earliest paperwork filed with the SRMT Court is a 1952 signed and witnessed agreement between Peter B. Cook and Alex Peters. In this document Peter B. Cook sold to Mr. Alex Peters (father of Ms. Ruth Peters) "...approximately half an acre of land, said property is situated on the north side of Route 37 between the homes of Tom Curlyhead (on the east side) and Joseph K. Peters (on the west side)." (*See*, Cook and Peters agreement dated 12-18-1952) [emphasis added]. While no border measurements are given for Alex Peters' parcel, the borders are described by giving the neighboring landowners, as seen in diagram 3 below. However, in this document the northern border is undefined. (*See*, Peter B Cook and Alex Peters agreement dated 12/15/1952 Tribal Clerk papers stamped 7/8/2010).

The SRMT Court's research found that Peter B. Cook bought this parcel from John Jackson whose wife, Mary Jackson, died after being hit while carrying baskets across the street by a car driven by Nancy Solomon in 1935. (*See, Indian woman killed hit by car*, Fort Covington Sun, Dec-Oct 1935.) Mr. Jackson purportedly sold the land because he was troubled by his wife's spirit. As a result of these findings, the SRMT Court made a request to the SRMT Tribal Clerk's office for any more information about the history of this property and the past owners. However, according to the Tribal Clerk's Office there are no records regarding either the sale to Mr. Jackson or the sale from Mr. Jackson to Peter B Cook. Therefore, there is a 'historical records gap' with respect to the ownership and dimensions of this parcel, and thereby leaving the northern boundary undefined. This causes great difficulty, for without the northern boundary defined there is no way to locate the 'line' which would complete the parcel to determine if it is in fact ½ acre, or how close (+/-) the parcel actually is to ½ acre. This will be further complicated by the description of Jos. Peters' property being the western boundary. We will discuss this in greater detail later in this decision.



Alex Peters ½ acre +/-
.5 Acre x 43,560 sq. ft. = 21,780 sq. feet
1952 agreement signed by the parties and witnessed by Abram Bero and John P. Brown. (This document is part of the record).

Next, Joseph K. Peters bequeathed all his property to his son Alex W. Peters. (See, Joseph K. Peters' will dated May 16, 1972). The property is defined in the will as being located on Route 37 adjoining Alex Peters' house on the east, Richard Laughing on the west, Alex Peters on the north and the highway on the south. No boundary measurement is given for the Joseph Peters property, nor is the size of the property discernible from this 1972 will.



The SRMT Court, upon inquiry to such, was informed by the SRMT Tribal Clerk's office that there were no documents on record that show how Joseph Peters came into possession of this parcel of land. This later proves troublesome when the 2008 Tribal Council inadvertently defines the Jos. Peters' property while in the process of defining the Alex Peters' property, and the border between this parcel and Ms. White and Ms. Point. This will be discussed in detail later. Furthermore, one must first recall that since there was NO northern boundary given for the Alex Peters property, it is the same Alex Peters' property which is provided for in the Joseph Peters land documents as being the northern property boundary for Joseph Peters. Therefore, the Joseph Peters property had to be, and is or was, smaller than the Alex Peters property. (See, Diagram 3). In both instances it is clear that the Alex Peters property provides the northern boundary of the Joseph Peters parcel.

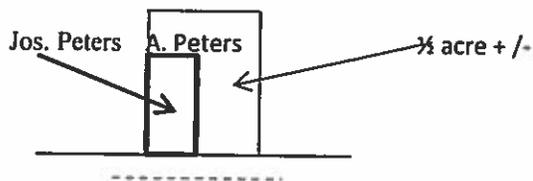
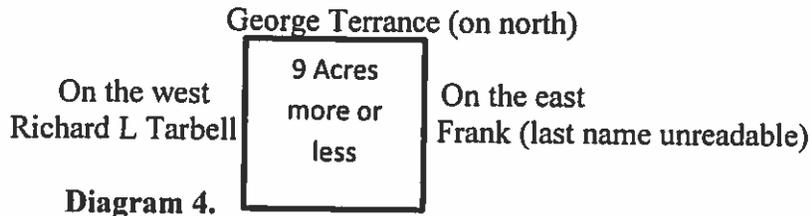


Diagram 3. State Route 37

Joseph K. Peters parcel
Acreage unknown
Will dated May 16, 1972. (This document was on file with the SRMT Tribal Clerk.)

With respect to Ms. Point and Ms. White the oldest recorded transaction the Court has received, as part of the case at bar, is a 1937 agreement between Thomas Terrance and Isaac White to exchange lands. This agreement was recorded by Tribal Clerk Thomas Bero in the Tribal Record Book on page 15. In this July 1, 1937 agreement "Thomas Terrance releases his land to Isaac White containing about 9 acres more or less..." in exchange for 3 3/4 acres of land owned by Isaac White plus \$150.00 to make up the difference. (See, Agreement between Mr. Terrance and Mr. White dated 7-1-1937 SRMT Tribal record book p. 15)[emphasis added]. This document describes the borders by neighboring land owners.



Main Highway (State Route 37)

In this agreement, the phrase main highway is used, rather than using the more common term used today to describe the roadway as State Route 37. The Court concludes that in this context the phrase “main highway” used in the agreement between Thomas Terrance and Isaac White refers to State Route 37. The Courts adds that no measurements are included in this transaction, only neighboring land holders. Nonetheless, as this Court has previously held when discussing acreage the SRMT Court will use standard American measurements with a preference for square footage. (*See, White v. White*, Case No. 10-LND-00009, (SRMT Ct. July 26, 2012)).

9 acres x 43,560 sq. feet = 392,040 sq. ft. * Document reads “about 9 acres more or less.”
1937 agreement between the parties recorded in Tribe Record Book on page 15.

Next, in a will dated August 16, 1937, which is just over a month after his July 1, 1937 land exchange with Thomas Terrance, Isaac White bequeathed to his daughter Sadie A. Tarbell [(White) Curlyhead-Harris] all of his property “about ten (10) acres more or less situated on the St. Regis Mohawk Reservation...” (*See, Tribal Record Book* p. 18, copy on file with the SRMT Court). Ms. Sadie Harris is the mother of Patricia White and the Grandmother of Melody Point, the Appellants in the case at bar. The only location/description of this parcel of land is that it is located on the north side of ‘the highway’ on the Reservation leading from Hogansburg to Rooseveltown.

The amount of acreage bequeathed to Ms. Harris is problematic in that it appears to be one acre over what he actually owned. As evidenced in the agreement between Thomas Terrance and Isaac White, for ‘9 acres more or less,’ and there is no mention of Isaac White reserving lands adjoining the July 1, 1937 land exchange. Yet, in Isaac White’s will of August 16, 1937, he bequeaths to Ms. Harris 10 acres more or less. The SRMT Court file, gathered from the parties and Tribal Clerk’s office, does not provide an explanation for how this additional 1 acre came into existence. The expression that “you can only give what you have” comes to mind. As such, the Court concludes that the amount of land bequeathed to Ms. Harris is 9 acres more or less and not 10 acres more or less. The Court must also stress that, as provided, the land bequeathed is also subject to the “more or less’ language used in the White/Terrance agreement.



Diagram 5.

State Rte. 37

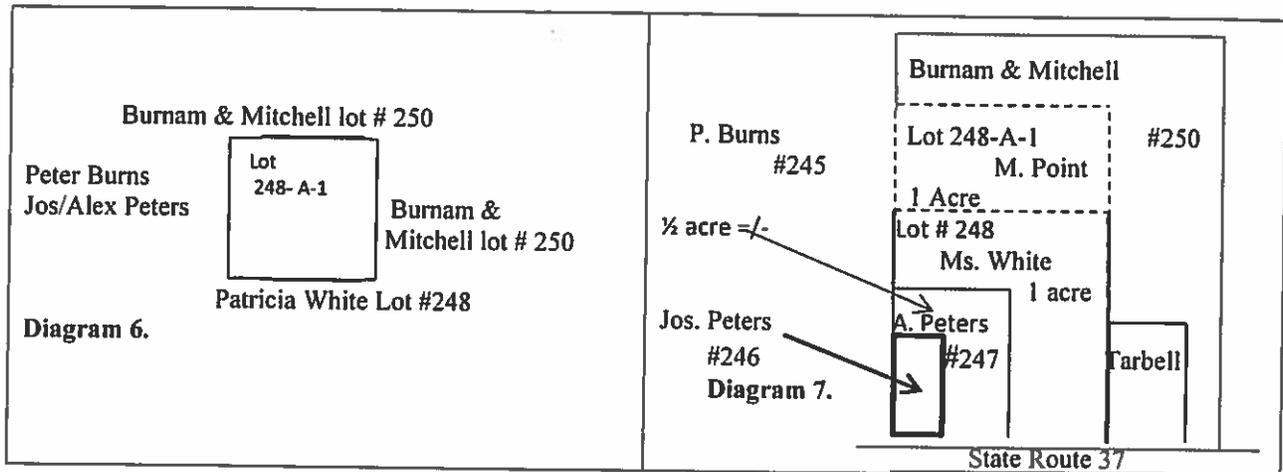
SRMT Court concludes 9 acres x 43,560 sq. feet = 392,040 sq. ft. (Keep in mind +/- language)
Will states 10 acres x 43,560 Sq. ft. = 435,600 sq. ft. (Keep in mind +/- language)
August 16, 1937 Last Will and testament witnessed by Louis Bero, Melvin White, and Thomas John Curlyhead. Witness to Isaac White's mark (X) Thomas Bero Tribal Clerk. Tribe Record Book pg. 18.

With respect to Ms. Point and Ms. White, in a document dated April 7, 1988, Sadie Harris, "give and bequeath to my daughter Patricia Irene (Curlyhead) White, two acres of land on which she presently resides." (See, Sadie Harris document dated April 7, 1988). Ms. Patricia Curlyhead White is one of the Appellants in the case at bar. Ms. Harris states that these 2 acres are part of the '10 acres more or less' she owns. (*Id.*) There are no boundaries defined nor any border measurements given other than that she is giving Ms. White two (2) acres.

As mentioned earlier, there is no evidence indicating that Isaac White had ten (10) acres +/- to bequeath to Ms. Harris. The land exchange between Mr. Terrance and Mr. White was for nine (9) acres more or less. The Court finds the amount of land bequeathed to Ms. Harris is 9 acres more or less and not 10 acres more or less. As such, here when Ms. Harris bequeathed 2 acres to Ms. White of her 9 acres, it would have left Ms. Harris a remainder of seven (7) acres more or less.

Sadie Harris to Patricia White 2 acres undefined
2 Acres = 87120 sq. ft.
Sadie Harris document dated April 7, 1988 signed and notarized.

Next, on January 16th, 1999, Patricia White deeded one (1) acre more or less to Melody White. This deed does not give any border measurements, but it does describe the borders by neighboring land owners. (See, Diagram 6). Re-tracing the roots of this transaction one can clearly see that the acreage conveyed here, between Ms. White and Ms. Point, is an acre of the 2 acres Ms. White received from her mother, Ms. Harris, in 1988. Interestingly, Ms. White did not have a deed for this land at the time she conveyed one acre, of the 2 acres she received from Ms. Harris in 1988, to her daughter Ms. Point. In this deed, Ms. White's lot is referred to as 248A and the acre deeded to her daughter becomes Lot #248-A-1. In addition, there also appears to be an error in that this deed alleges to be bounded on the West as follows: "...by land owned by Alex Peters Estate, Lot #247, Joseph Peters Estate, Lot # 246, and Peter Burns, Lot # 245." As follows:



Again in reviewing Joseph Peters' 1972 will, Jos. Peters clearly states that his son Alex Peters' property provides his northern and eastern borders. (See, Diagram 7). As such, the Court finds that Jos. Peters cannot be a westerly border to Ms. Point's Lot # 248-A-1 because Mr. Jos. Peters' property is clearly bounded on the north and east sides by Mr. Alex Peters' property.

Lot # 248A-1 Patricia White to Melody White
1 acre equals 43,560 sq. ft.
Unknown border measurements
SRMT Use and Occupancy Deed.

This begins some of the issues present in the case at bar for as indicated there were no border markers provided in some of the Peters' transactions and no measurements provided in the White/Harris transactions.

On March 9, 2000, Sadie Curlyhead Harris deeded to her daughter Patricia White approximately one (1) acre, lot number 248. This transaction took place three months prior to the June 2000 Tribal Council decision. It is a bit confusing since this SRMT deed for Lot #248 comes 2 months after Ms. White deeded an acre of this parcel to Ms. Point, now known as Lot #248-A-1. In other words, this March 9, 2000 deed for an acre (Lot #248) is what remains of the original 2 acres Ms. White received from her mother, Ms. Harris, in 1988.

The March 9, 2000 deed shows that while some of the boundary measurements are given, other borders are unknown. (See, Diagram 8). There is no description for the western boundary west of Alex Peters property, nor is there one for the northern boundary where it meets Ms. Points property. This deed also states that the border between Lot #248 and the Alex Peters property is 4 feet from the Peter's house (Lot #247). (See, Diagram 8, below). The red border depicts the only delineations made in this deed.)

The same error in the January 16, 1999 deed above concerning Jos. Peter's property being a border is also made in this deed. According to the documents noted in this decision, that Jos. Peters' property is bordered on the east and north border by his son, Alex Peters' property, it is impossible for Jos. Peters' property to be a border for Ms. White and Ms. Point's parcels. (See diagram 7 & 9; See also, Jos. Peters transaction and Alex Peters transaction).

Diagram 8. Deed dated March 9, 2000	Diagram 9.
Lot #248 Sadie Harris to Patricia White 1 Acre +/-	
Western and northern boundary unknown.	
Margaret Burnam and Mitchell Curlyhead Lot #250	
Norman Tarbell Lot #249	
Alex Peters Lot #247	
Joseph Peters Lot #246	
SRMT Use and Occupancy deed	

Next, on March 21, 2000, Sadie Harris deeded the remainder of her property known as Lot #250 to her **children**, her son Mitchell Curlyhead and her daughter Margaret Curlyhead Barnam. Mr. Curlyhead and Ms. Barnam are the brother and sister of Ms. White and Uncle and Aunt to Ms. Point who are the Appellants. In this deed, Ms. Harris alleges to convey acreage to Mr. Curlyhead and Ms. Barnam “containing nine point five-five-eight (9.558) acres, more or less...” (See, Harris deed dated 3-21-2000).

However, there appears to be two miscalculations in how much acreage was transferred during this transaction. The first is in the actual amount of land Ms. Harris inherited from her father Mr. Isaac White. The second miscalculation occurs as a result of not correctly subtracting the lands already deeded to Ms. Harris’ daughter, Ms. White.

In the first instance, as the Court has already discussed earlier in this decision, the July 1, 1937 land exchange agreement between Thomas Terrance and Isaac White was for “**9 acres more or less**,” and there was no mention of Isaac White reserving lands adjoining this land exchange. Yet, in Isaac White’s will dated August 16, 1937, he bequeaths to his daughter, Ms. Harris, 10 acres more or less. As such, and based on the absence of evidence to prove otherwise the SRMT Court concludes that the amount of land bequeathed to Ms. Harris is 9 acres more or less and not 10 acres more or less.

In the second instance, the remainder of land, 9 acres, at this time for Ms. Harris to deed to her other children (Mr. Curlyhead and Ms. Barnam) is seven (7) acres when one subtracts the two (2)

acres Ms. Harris had already given to Ms. White in 1988¹⁵². (See, Sadie Harris document dated April 7, 1988; SRMT Deed between Ms. White and Ms. Point dated 1-16-1999; SRMT Deed between Ms. Harris and Ms. White dated 3-9-2000).

The problem seems to have stemmed from Ms. Harris inheriting 9 acres +/- and not 10 +/- from her father in 1937 and the confusion caused by Ms. Harris giving to her daughter, Ms. White, in the 1988 transfer 2 acres without a deed being recorded in the Tribal Clerks office. To make the matter more complicated, Ms. White then deeds an acre, (of her 2 acres from the 1988 agreement "living will" with Ms. Harris), to her daughter Ms. Point. (See, deed dated 1/16/1999 between Ms. White and Ms. Point). Then, in March 9, 2000 Ms. Harris (mother) deeded to Ms. White (daughter) the remaining 1 acre, of the 2 acres she gave to Ms. White in 1988. In other words, Ms. Harris could not deed to Ms. White the original 2 acres because in the previous year Ms. White had deeded an acre of the 2 acres to Ms. Point. As such, the SRMT Court concludes that the March 2000 deed of Lot #250 should have been for 7 acres more or less and not 9.588 acres.

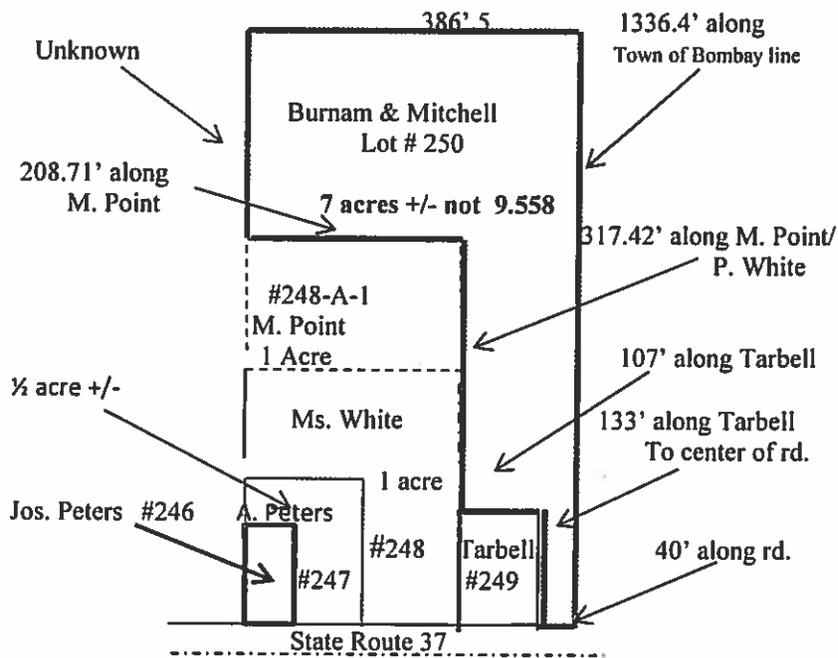


Diagram 10.

The March 2000 deed of Lot #250 gives numerous border descriptions and some measurements for boundaries but not all. The starting point is State Route 37 in a northerly direction along the Town of Bombay line for 1,366.4'. The northern boundary is 386.5' in a westerly direction to the Peter Burn's property. The westerly boundary's square footage, where it heads in a southerly direction along the Peter Burns property, Lot # 245, to where it meets Ms. Point's one acre

¹⁵² Furthermore, there is no documentation in the Record to show that Sadie Harris owned 11,588 acres, rather than the 9 acres more or less she received from her father's estate. As such, Ms. Harris could not convey 9.588 acres in the March 21, 2000 deed because she only had 7 acres more or less at the time to convey.

(#248-A-1), is undefined. Moving from this point in an easterly direction for 208.71,' then, in a southerly direction 317.42' to where it meets with the northern end of Norman Tarbell's Lot # 249. The border then proceeds along the northern border of Norman Tarbell's lot for 107' then in a southern direction 133' to the middle of the road and 40' along Route 37 to the point of beginning. (See, Diagram 10 above where the blue lines depict this deed)

The March 21, 2000 deed for Lot #250 records the conveyed acreage as being 9.558 acres +/- or 416,346.48 sq. ft. +/-, which according to the original estate being 9 acres more or less minus the 2 acres already deeded from the estate makes Lot# 250, at the time of this deed 7 acres more or less, which equals 304,920 sq. ft. As such, this deed is 111,426.48 sq. ft. or 2.558 acres more than what the actual acreage was.

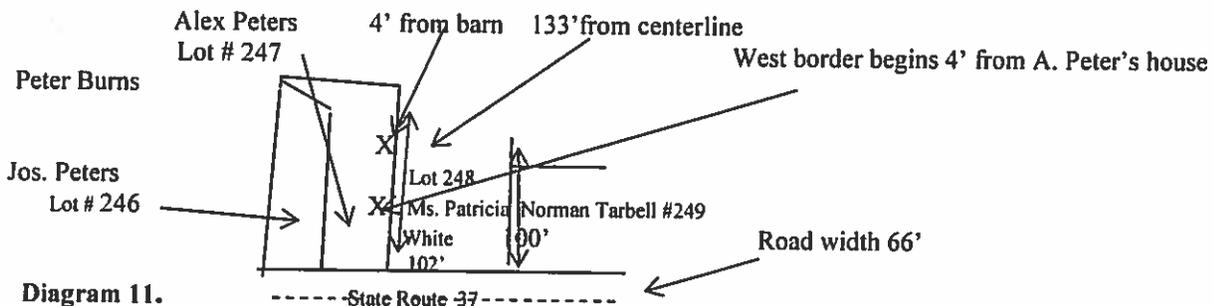
SRMT Use and Occupancy Deed for Lot #250 (between Sadie Harris and Mitchell Curlyhead and Margaret Curlyhead Barnam)
Recorded as: 9.558 Acres = 416,346.48 sq. ft.
Actual is 7 acres +/- = 304,920 sq. ft. (based on 7 acres)

June 7, 2000 Tribal Council Decision

Ruth Peters, on behalf of the Alex Peters Estate, filed a land dispute against Sadie Curlyhead Harris, and her children (Patricia White, Margaret Burnam and Mitchell T. Curlyhead) [hereinafter Sadie Harris et al.] resulting in a Tribal Council decision in favor of Sadie Harris et.al. This decision is very brief consisting of only a few paragraphs and a not-to-scale hand drawn map that describes the decision as follows:

Beginning at the north boundary of New York Route 37 and proceeding in a northerly direction four (4) feet east of house of reputed owner Alex Peters and continuing in said northerly direction four (4) feet east of the barn located to the rear (North) said house to a point of 133 feet from said highway centerline.¹⁵³

This decision sets Alex Peters' northern boundary as 4 feet behind the barn and the property's eastern boundary at 4 feet from the house and barn with the only boundary given footage being the eastern boundary between the two parties being set at 133 feet from the highway's centerline. Unfortunately, the 2000 Tribal Council decision does not provide a record of the reasoning that went behind the Council's decision.



¹⁵³ See, 2000 Tribal Council decision dated June 7 2000.

In this decision there does not appear to be any consideration or reference to the agreements and Last Will and testament of Jos. Peters as noted herein. In addition, it appears that the 2000 Council did not take into consideration Alex Peters parcel being ½ acres +/- (when determining Alex Peters eastern boundary) as there are no measurements or references to his total acreage. The 2000 Council simply determined the eastern and northern border without checking to make sure the acreage was correct, as defined in A. Peters 1952 Agreement with P. Cook. The decision also failed to recognize that by changing one border it has an effect on other neighboring borders, which should have been addressed.

Interestingly the hand drawn map attached to the 2000 Council decision shows that Joseph Peters property has as its northern border Alex Peters' property, which as mentioned previously in this decision is contrary to the deeds between Ms. Harris, Ms. White, and Ms. Point. The 2000 Council decision finds, as does this Court that the Joseph Peters property is within Alex Peters and as such, the Joseph Peter's property does not form a boundary for Ms. White's property. However, it is also apparent that the 2000 Council decision relied on the March 9th 2000 deed, issued 3 months prior to the 2000 decision, between Sadie Harris and Patricia White to determine that the boundary between Alex Peters and Patricia White's property begins 4 feet from Alex Peters' house and the northern border as being 4 feet from his barn. (See, Diagram 11). The SRMT Court will discuss the 4' measurements and the shape of the border later in this decision.

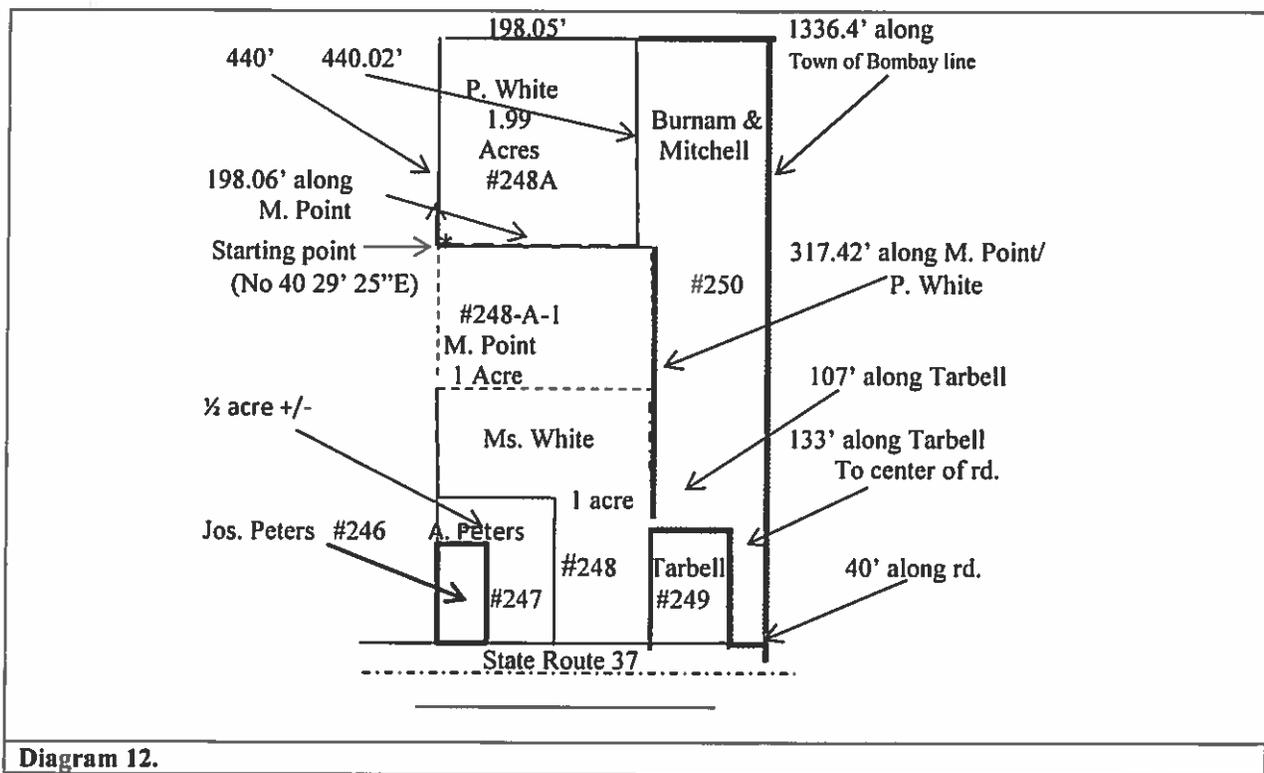


Diagram 12.

Three months after the June 7, 2000 Tribal Council decision, Mitchell Curlyhead and Margaret Burnam (the two children of Ms. Harris and the brother and sister to Ms. White) deeded to Patricia White 1.99 acres of land from the portion of the property known as Lot# 250. (See, deed dated September 14, 2000 between Mr. Curlyhead, Ms. Burnam and Ms. White). This acreage is located above the acreage presently held by Ms. Point. This deed gives border measurements

in square footage and in degrees, as well as naming owners on the east and south border. The starting point is defined as “commencing in the Western Portion and proceeding in a northerly direction 440.0’ N40° 29’25”E to a point.” Then, the border proceeds in an easterly direction for 198.05’. Then, is a southerly direction along lot # 250 (Curlyhead & Burnam property) for a distance of 440.02’. Then, proceeds in a westerly direction along the property of Melody Point for a distance of 198.06’ till the point of beginning. (See, Diagram 12 [solid red line represents the land in this deed]).

Here, one learns that the undefined western border in the March 21, 2000 deed between Ms. Harris and Mr. Curlyhead and Ms. Burnam, is 440.0’ according to the September 14, 2000 deed, which defines land conveyed from Mr. Curlyhead and Ms. Barnum to Ms. White. Ms. White’s Lot #248-A (mother of Appellant) is situated above Ms. Point’s (Daughter of Appellant) Lot# 248-A-1; and, according to this deed extends 10 sq. ft. longer eastward than Ms. White’s property (248-A). (See, Diagram 12). In addition, the dimensions in the deed provide Ms. White with 2 acres +/-.

SRMT Use and Occupancy deed between Mr. Curlyhead, Ms. Burnam and Ms. White.
Lot# 248-A (which borders on the South with Melody Point’s Lot# 248-A-1)
Acreage 1.99 = 86,684 (436 sq. ft. short of 2 acres) +/-
Actual: 440.01 x 198.05 = 87,143 (equals 2 acres) +/-

2008 Tribal Council Decision

Ruth Peters asked a new sitting SRMT Council to hear her appeal against Sadie Curlyhead Harris, Patricia White, Margaret Burnam, and Mitchell Curlyhead (hereinafter Ms. Harris et. al) stemming from the Tribal Council’s June 7, 2000 decision. As a preliminary issue the 2008 Council examined whether this appeal meets the SRMT Council’s evidentiary threshold to overturn a previous Council’s decision. The two prong test, used by the 2008 Council, then in place, to overturn a Tribal Council apparently required: 1.) Evidence of fraud, blatant bias, manifest injustice, or 2.) There is new information that was never placed before the prior Council. (See, 2008 Tribal Council decision dated 10-15-2008 p. 2-3).

The 2008 Council found that Ms. Peters’ appeal met the threshold requirement in that the 2000 Tribal “Council did not substantiate their decision sufficiently...” nor did they “fully consider the information and testimony available from the Peters family.” (See, 2008 Tribal Council decision dated 10-15-2008 p. 2). In addition, the 2008 decision states:

It has further found that due to the non-existence of an original Sadie Curleyhead [Sic] hand drawn-map, copies of which both parties point to as evidence to support their claims, it would have been impossible for the previous Council to determine the true and accurate boundary of these disputed lands. (See, *Id.* p.2). In sum, Council has determined that the previous Council did not fully consider the information and that failure to make a determination as to the validity of the Sadie Curlyhead map has resulted in an injustice that warrants entertaining this appeal.

Based on the aforementioned reasons, they agreed to hear Ms. Peters' appeal *de novo*.¹⁵⁴ The 2008 Tribal Council decision found as follows: Ruth Peters is entitled to ½ (one half) acre of land which was purchased from Peter B. Cook by [her father] Alex Peters... [And she] "is entitled to the property formerly owned by Joseph Peters [her grandfather]..."¹⁵⁵

The 2008 Tribal Council decision provides a map that delineates measurements for the boundaries of the Alex Peters' Lot #247 as shown below:

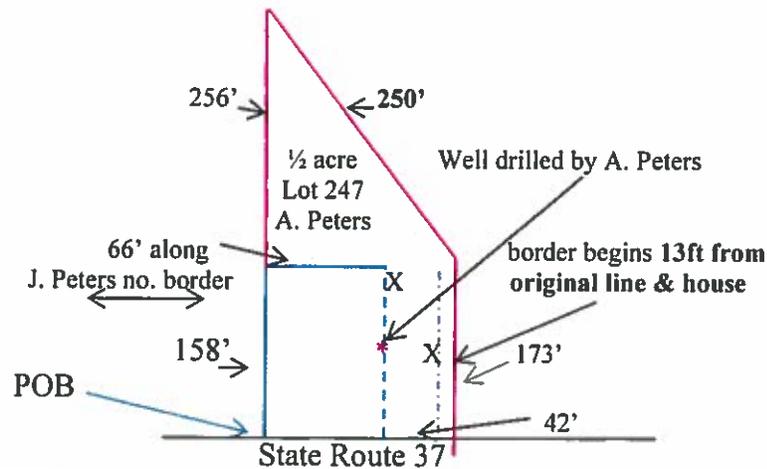


Diagram 13.

Alex Peter's southern boundary along Route 37 is 42 ft.
Southeast border is 173 ft.
Northwest border 256 ft.
South 66 ft.
West border 173 ft. to POB.
0.5 acres = 21780
Actual is 0.518 or 22,599'

In the process of defining the measurements for Alex Peters' property, the 2008 Council defines the Joseph Peters property. (See, Diagram 14). Unfortunately, the 2008 Council decision does not sufficiently explain in their decision how they determined the dimensions of Alex Peters' property, nor did they explain how Joseph Peters' parcel was determined, which is problematic since there are no known measurements for either parcel of land, other than Alex Peters' property being a ½ acre more or less as stated in the 1952 agreement between Alex Peters and Peter Cook. As such, they make the same mistake as the 2000 Council in failing to reconcile the fact that the Alex Peters documents did not provide a northern boundary, nor did they address the fact that the Sadie Harris property was about 9 acres more or less and not 10 acres.

The Joseph Peters' property is defined on the 2008 Council's attached map as having the following measurements:

¹⁵⁴ They would hear the case anew. See, BLACKS LAW DICTIONARY 300 (6th ed. 1991).

¹⁵⁵ See 2008 Tribal Council Decision *supra* note 3 at 4.

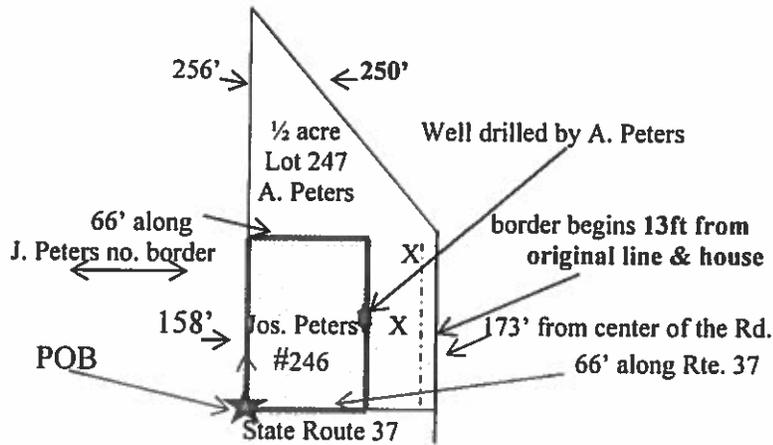


Diagram 14.

POB East boundary 158 ft.
North boundary as 66ft.
Southern boundary along Rte. 37 at 66 ft.
West border 158ft. to POB.
As defined above Jos. Peter's land equals 0.23 acres or almost a quarter of an acre.

The body of the 2008 Council decision does not mention where they have set the eastern boundary of Ms. Peters and Ms. White and Ms. Point's western boundary. Instead, they provide as part of their decision an attached map. This map has written on it the following: "13 ft. distance between **original line and house**" (See, 2008 Tribal Council decision dated 10-15-2008; See also, Diagram 13) [Emphasis added]. This is problematic in that it does not clearly define what is meant by the "original line." The "original line" could be the 4' line as defined in the 2000 Tribal Council decision or it could be measured from the Peters' house. It is important because if it is measured from the 4 feet line than adding 13 feet would make the line 17 feet from the Peters' house or it could be 13' from the Peters' house. The Court believes this to be an error in the choice of words used by the map maker and that the 2008 Council decision meant to measure the border between the parties at 13 feet from the Peters house.

There is also a discrepancy between the 2008 Council decision map and the map attached to Ruth Peters' deed issued October 5, 2010. The 2008 decision shows the frontage to be 42 feet wide with the 13' distance between the original line and the house; whereas, Ms. Peters' deed shows the footage as being 55ft. (See, R. Peters' deed dated 10-5-10).

The Sadie Harris Map

The use of the alleged 1978 Sadie Harris map triggers the need for this Court to discuss the parol evidence rule. The parol evidence rule generally excludes the use of oral and extrinsic evidence that contradicts or adds to the written terms of a contract that appears to be integrated (a final expression of one or more terms) into a contract. (See, Restatement (Second) of Contracts §§209, 213). We discuss this as the SRMT Civ. Code § V permits the use of the Restatement of Contracts. To determine if the parol evidence rule is applicable the Court as a preliminary step must determine if the agreement is completely or partially integrated. (See, Restatement (Second)

of Contracts §210). In other words, was the agreement adopted by the parties as a final and exclusive statement? If the agreement is completely integrated than the parol evidence rule would generally bar the oral or extrinsic evidence.

However, there are exceptions to the parol evidence rule, including for partially integrated contracts, agreements with separate consideration, to resolve ambiguities, in the case of fraud, duress, mistake, and/or to establish plain meaning. (See, Restatement (Second) of Contracts §§214, 217). In addition, the modern trend of Courts is to be more liberal in admission of parol agreements.¹⁵⁶ The *Restatement (Second) of Contracts* adds to this view by rejecting the notion that the writing itself can "prove its own completeness" and that "wide latitude must be allowed for inquiry into circumstances bearing on the intention of the parties." (See, Restatement (Second) of Contracts §210 cmt. b (1981)).

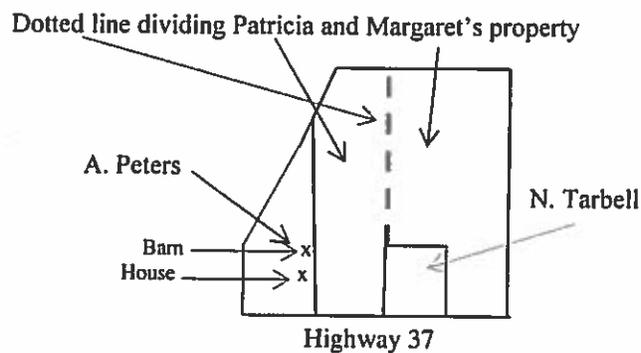


Diagram 15.

1978 Sadie Curlyhead Harris Map

The 2008 Council appears to have depended on a map attached to the 1978 Sadie Curlyhead Harris will in making their decision to not only hear the case but to determine the shape of Alex Peters' property. In the alleged signed and witnessed Sadie Curlyhead Harris will, dated August 23, 1978, she specifically refers to a hand drawn map that is attached to said document. The writing provides:

Prior to my death, they [daughters] may build on it and use the portions that they are each to inherit. I have drawn a map showing my property and its boundaries and I have hand drawn a dotted line on it to show the division between Patricia's property and Margaret's property. Said dotted line starts at the back northwest corner of Norman Tarbell's property and goes straight back to the back boundary of my property –adjoining the Terrance property. (See, Harris will dated 8/27/78 at p. 1; see also Diagram 15). [emphasis added].

One of the first issues to recognize with the 1978 map is that Ms. Harris revokes this will in a later will. This does not change the fact that there is in existence an apparent map that she had hand drawn showing her property boundaries, which was attached to her 1978 revoked will.

¹⁵⁶ Michael B. Metzger, *the Parol Evidence Rule: Promissory Estoppel's Next Conquest?* 36 VAND. L. REV. 1383, 1397 (1983); See, also Michael A. Lawrence, Comment, *The Parol Evidence Rule in Wisconsin: Status in the Law of Contract, Revisited*, 1991 Wis. L. Rev, 1071, 1077(1991).

As mentioned above, the 2008 Tribal Council decision relied upon the 1978 Sadie Curlyhead Harris map, in determining the boundary and shape of Alex Peters' (Ruth Peters) property. The 2008 Tribal Council "determined that the previous Council did not fully consider the information and that failure to make a determination as to the validity of the Sadie Curlyhead map," which both parties pointed to in arguing their case, and this "has resulted in an injustice that warrants entertaining this appeal." (*See*, 2008 Tribal Ct. Decision p. 2). Ms. Peters during the trial of this matter also offered as evidence a version of Ms. Harris' 1978 map to prove the shape of her land. (*See*, Exhibit 6 on file with the SRMT Court).

The SRMT Court's file which was gathered from requests from the SRMT Clerk's office and the Parties submissions actually contains ten (10) copies of the 1978 Ms. Harris map. Of these 10 maps, 5 can be eliminated because they fail to show the dotted line Ms. Harris clearly discusses in said will that shows the boundary division between Ms. White's property and Ms. Burnam's property. Of the remaining five Harris maps, showing the dotted border between Patricia and Margaret's property, all clearly define Ms. Harris', now Patricia White and Melody Point's, western property border with Alex Peters and Richard Laffin; and, that the shape of Alex Peter's property past the barn is tri-angular in shape. (*See*, Ms. Harris Maps on file with the SRMT Court). Of these five (5) maps only one was received, upon the SRMT Court's request for files, from the SRMT Tribal Clerk's office, which the SRMT Court stamped July 6, 2010.¹⁵⁷ While this map is a copy of said map, it appears to be the Ms. Harris map the 2008 Tribal Council based their decision upon.

Clearly the existence of 10 maps, and 5 having the noted dotted line, while 5 do not, is problematic in itself. The SRMT Court is perhaps more concerned with the dimensions, measurements, boundaries, and deeds associated with the case at bar, as well as any errors in these documents and the impact on the other boundaries adjoining the disputed boundary between the Alex Peters (Ms. Peters') and Ms. White and Ms. Point properties. In addition, the Council's inadvertently defining the Joseph Peters property in shape and the size as being a ¼ of an acre, according to the measurements provided in the attached map to the 2008 Council decision, is troublesome since there is no such description until the 2008 Council decision. Finally the inability to question the Ms. Harris map also renders its validity suspect. Therefore, although we do not exclude the 1978 map, we also do not solely rely upon it due to the inconsistencies noted here.

IV. ANALYSIS

As was noted earlier in this decision, the SRMT has a hierarchy of applicable laws that may be applied. In the case at bar, the SRMT TCR 2009-69 Land Dispute Resolution Ordinance [as Amended Apr. 14, 2011][hereinafter SRMT LDRO] is on point in covering the subject matter of this dispute.¹⁵⁸

¹⁵⁷ The Court Attorney initialed and clearly marked the map as being received from the Tribal Clerk. (*See*, Ms. Harris Map stamped July 6, 2010, on file with the SRMT Court).

¹⁵⁸ SRMT TCR 2009-69 Land Dispute Ordinance [as Amended Apr. 14, 2011].

The SRMT Council's 2008 decision, as a preliminary issue, held that a previous Council's decision should not be overturned absent the finding that there is new evidence that was not present previously, or that there was some evidence of fraud, blatant bias, or manifest injustice, or the like. The SRMT LDRO §5(F)(2) now delineates the test as follows:

The issuance of deeds is not challengeable unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress. The Tribal Council reserves the right to correct or amend deeds due to error. All recorded deeds must bear the signature of the Tribal Council along with the signature and seal of the Tribal Clerk.

Although the above provision speaks of Use and Occupancy Deeds rather than Council decisions, it is fair to conclude that the test for when a Tribal Council decision may be respectively changed or overturned is upon the showing that there was either: Evidence of fraud, blatant bias, duress, coercion, error, or manifest injustice (*See* SRMT LDRO §5(F)(2)).

The case at bar satisfies the preliminary challenge of whether a decision of the SRMT Council can be corrected or overturned as evidenced by the presence of new information obtained through researching, measuring, and walking the properties in question that have revealed numerous errors. It is clear that the 2008 Council did not substantiate their decision sufficiently. In that the decision fails to provide how they determined the size of Joseph Peter's property, that the boundary between the parties should be set at 13 feet from the Peter's house, and to account for the effect to other borders in maintaining Mr. Alex Peters' one half acre more or less something which is supported by the record consisting of a prior agreement by two SRMT members. In addition, it is clear that there are errors concerning SRMT Use and Occupancy deeds that are directly related to the case at bar. These errors must be corrected to not only resolve this land dispute; but, to prevent future disputes from arising.

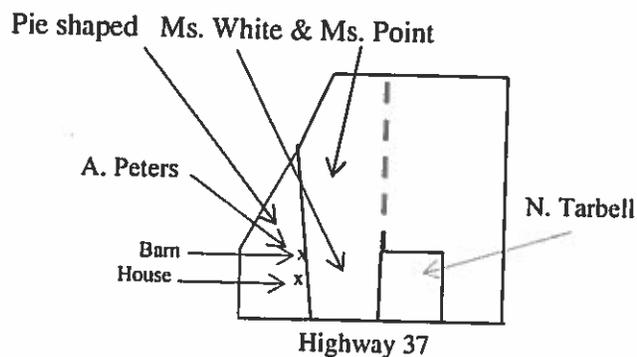


Diagram 16.

1978 Sadie Curlyhead Harris Map

Determining the shape of the property is essential to where the border between the parties should be situated. Doing so is complicated due to important pieces of information missing. This includes the original size and shape of Jos. Peters' property, the absence of any writing which defines Alex Peters' northern boundary, and that Alex Peter's property only lists Jos. Peters as his westerly border.

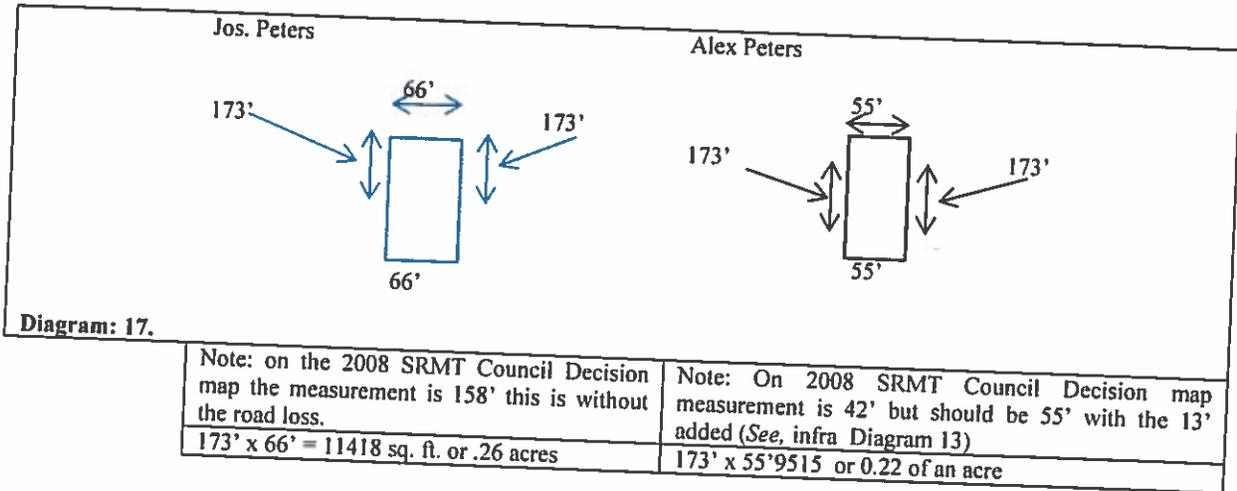
In addition, there are similar issues with the Appellant's deeds, which were issued a few months before the 2000 Council decision. Ms. White's deed does not define her westerly border west of Alex Peters property, nor is there one for the northern boundary where it meets Ms. Points property, and Ms. Point's deed is said to be bounded on the westerly border by Peter Burns, Alex Peters and Joseph Peters, which as discussed above is not possible since Alex Peters property forms Jos. Peters' northern boundary. Prior to these deeds, when Ms. Harris in 1988 gave Ms. White 2 acres there were no dimensions or borders given, which has added to the complexity of the case at bar. In addition, the total amount of land owned by Ms. Harris is problematic in that her father bequeathed to her 10 acres more or less about a month after making a land exchange with Thomas Terrance for 9 acre more or less. As such, she was bequeathed about an acre more than what her father, Isaac White, actually owned. This is further complicated by the March 2000 deed of Lot #250 (from Ms. Harris to her on Mitchell Curlyhead and daughter Margaret Barnam). This deed should have left a remainder of 7 acres more or less and not 9.588 acres of the Harris estate since Ms. Harris had already deeded to her daughter 2 acres. However, according to the March 2000 deed the Harris estate is incorrectly stated as being 11.588 acres.

The 2008 Tribal Council decision used the Sadie Harris 1978 map to determine the shape of Alex Peters' property. Use of the Harris map is problematic in that this map was not a product of an agreement between Mr. Peters and Ms. Harris. In fact it has nothing to do with the agreement between Mr. Alex Peters and Mr. Peter Cook (for said half acre more or less parcel of land). However, the 2008 Council and Ms. Peters used the alleged 1978 Harris map as evidence to show that Ms. Peters' (Alex Peters' original ½ acre) is 'pie-shaped' and is bordered on the east by Ms. White's land and a portion of Ms. Point's western border. (See, Diagram 16). Said map seems to narrowly clarify Ms. Harris' understanding of her boundaries, at the time, the map was drawn. But, the existence of up to 10 maps with varying attributes makes reliance upon it questionable at best. Furthermore, directly contradicting this assertion are the Peters' documents. These documents clearly contradict the Harris Map.

Mike Jock and David Printup, who previously worked for the SRMT Construction Department, testified that they were recruited by Tribal Council in 1999, to investigate the land dispute between Ms. Peters and Ms. White. (See, SRMT Court digital recording dated October 5 & October 26, 2012 on file with the Court). When questioned, they also could not clarify the origination or different attributes of the 1978 map. Mike Jock testified that in doing his research they assumed that Jos. Peters and Alex Peters had a half acre each in that they followed an acre. (See, SRMT Court digital recording dated October 5, 2012 on file with the Court). This Court concludes that there is no evidence to support the assumption that Jos. Peters owned a one-half acre or that together with Alex Peters there is one acre of land.

The 2000 SRMT Council appears to have ignored Mr. Jock and Mr. Printup's findings, as evident by the map attached to the decision, in that the combined total acreage for Mr. Jos. Peters and Mr. Alex Peters falls far short of totaling one ace. As a matter of fact, the 2000 SRMT

Council decision map shows the parcels as equaling together 14,364 sq. ft. or 0.33 acres, which falls far short of one-half acre.¹⁵⁹



Next, the 2008 SRMT Tribal Council decision in an effort to rectify the SRMT 2000 Council decision appears to incorporate some of the findings of Mr. Jock and Mr. Printup, as to size and shape of the property. The 2008 SRMT Tribal Council map provides measurable borders that can be calculated. In calculating these measurements, absent the additional square footage that forms the 'pie-shape,' together Mr. Jos. Peters and Mr. Alex Peters' property measure 20,933 sq. ft. or 0.48 acres. Individually the Jos. Peters property measures 11,418 sq. ft. or .26 acres, while the Alex Peters property measures 9,515 or 0.22 of an acre. This is based on the presumption that the water well forms the border between the Jos. Peters and Alex Peters' property. Please note these measurements do not include Alex Peters' 'pie-shaped' acreage and that the Jos. Peters' east and west border where calculated at 173' and not 158 to account for the 15' road front loss. (See, Diagram 17 above).

2008 map depicts the Bounder between the Peters as 66' and 55'
 2010 GPS walk of property shows the well to be located 5' west of 2008 map location

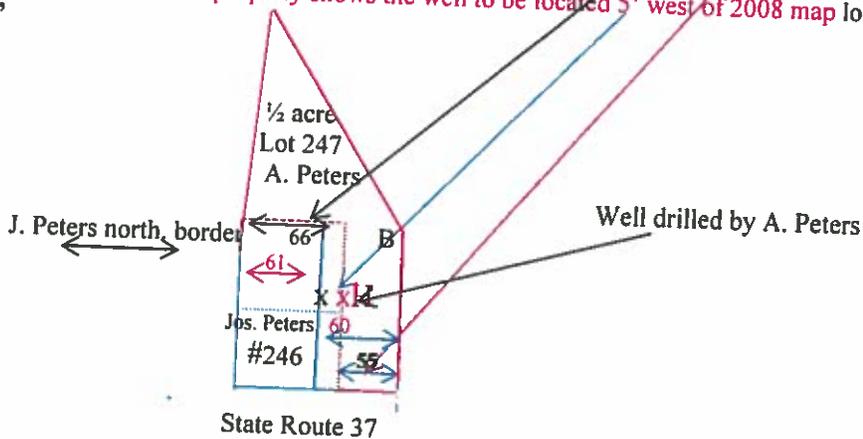


Diagram 18.

¹⁵⁹ These measurements are based on the 2000 SRMT Council decision map of (133' from center line) multiplied by 108' (based on the measurement of 66' + 42' for the north/south border attached to the 2008 SRMT Council decision map)].

It is clear that Ms. Peters is entitled to one-half acre (more or less) that was purchased by her father Alex Peters in 1952. Determining where the boundary is located between the aforementioned properties is interdependent on the layout and actual acreage of Jos. Peters' property and on determining where Jos. Peters' north and west boundaries meet with Alex Peters property. The Court now addresses the Jos. Peters' property.

According to Ms. Peters, the well her father drilled in 1965 serves as the boundary between the Alex and Jos. Peters estates. Close reading of the agreement between Alex Peters and William Lewis to drill the water well makes no mention of Jos. Peters. (*See*, Peter and Lewis Agreement on file with Court). There is no evidence, in the Court's file, to corroborate Ms. Peters' testimony that the well served as the border between Alex and Jos. Peters' properties.

In addition, data collected by SRMT GPS Technician Paul Doxtator and the Court upon their walk and survey of the properties on July 20, 2010, showed that the well is 5' west of where the 2008 Council decision map shows Mr. Alex Peter's west border with Mr. Jos. Peters to be. (*See*, GPS map dated July 20, 2010).

The 2008 Council decision map marks the border between the Jos. and Alex Peters as being 66' from Jos' Peters' western border and 55' from Alex Peters' eastern boundary. Using the 2010 GPS and Court walk of the property to correct the location of the well places the boundary line between the Peters as being 61' from Jos' Peters' western border and 60' from Alex Peters' eastern boundary. (*See*, Diagram 18). This corrects the 2008 map in as far as the physical location of the well; but, it does not provide evidence that the well served as the border between the properties. The 1965 agreement is solely between Alex Peter and William Lewis with the well drilled solely upon Mr. Alex Peters' property. As such there is no written evidence that corroborates the well was also on half of Mr. Jos. Peters' property. Therefore, this Court concludes that the well is solely on Alex Peter's property.

In addition, using the findings of the 2010 GPS and Court walk of the properties, that sets the well at 60 feet from Alex Peters' and Pat White's border, and Ms. Peters' testimony that well served as a border between the Peter's properties, this Court finds that Jos. Peters' northern boundary sits 1 foot south of Alex Peters' well. In addition, that Jos. Peters' eastern border with his son Alex Peters was in line with the well to the north of Jos. Peters' property and in accord with Defendant's testimony in as far as the well lining up with said east/west border between Jos. and Alex Peters. As such the Court finds that in accordance to the data collected in the field and the evidence provided by the parties that the Jos. Peters' property is an estimated 6,348 Sq. feet (0.146 acres), with a beginning point from the center of the Rte. 37, measuring 104' by 61'. (*See*, Diagram 19).

2008 SRMT Council Decision Map Jos. Peters' Northern border

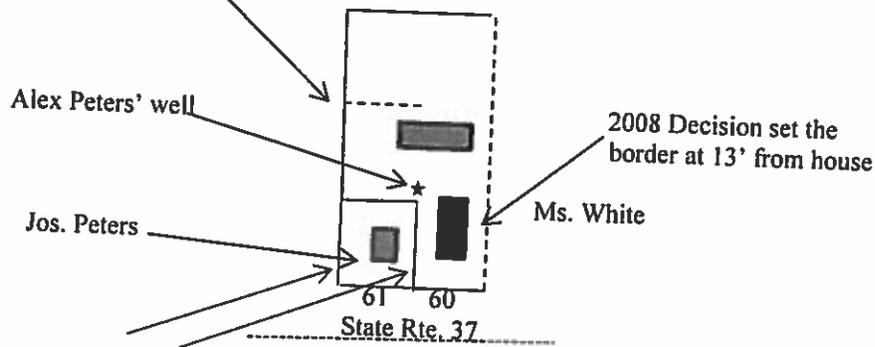


Diagram 19.

Est. 104 feet from center of rd. (but not including road footage) to 1 ft. below the well.

As to whether the border between Ms. Peters and Ms. White should be set at 4 ft. as requested by the Plaintiffs or 25 ft. as requested by the Defendant, in reviewing the Court's file, in particular the 10 copies of the alleged 1978 Sadie Harris hand drawn map one map has 4' marked north of the Peters' barn, 4' east of the barn, and 4' east of the Peters house. Another map has only the 4' marked on the map above the Peters' barn. Both of these maps were submitted by the Plaintiffs in the case at bar and are consistent with the 2000 Council's decision that set the borders at 4'. At some point there may have been a 4' fence in the back and side of the barn for a multitude of reasons such as farming and gardening but this Court is not convinced that it formed the boundary between the Parties as doing so would deprive Ms. Peters' of the original one-half acre plus or minus that she inherited from her father, Alex Peters.

This Court is also not convinced that the border should be set at 25 feet eastward from the Peter's house as requested by Ms. Peters. To support this allegation Ms. Peters' provided that as children, they played on the grass between the houses and that the property was mowed by Ms. Peters' father. This though does not prove ownership and only proves use. As such, this Court finds that both parties have failed to prove either of their requests as to where the aforementioned boundaries should be located. The Court shall uphold, in part the 2008 Council decision, in as far as setting the boundary at being 13 feet from the Peters' home eastward to where it meets Ms. White's property.

In addition, the Court shall use its equitable powers along with the findings found herein to set the point of beginning for Ms. Peters (Alex Peters) lot as follows: From the centerline of State Route 37, 13' from the Peters' home, heading in a northward direction 263' then straight across westward for 101' until meeting the west border with Peter Burns (now SRMT), then south 154' meeting Jos. Peter's property, then east along the Jos. Peters' property for 61', then south 104', then eastward 60' till meeting with the point of beginning. **This parcel as described shall equal one-half acre more or less, not including the Jos. Peters property, which is the original one-half acre more or less purchased by Alex Peters from Peter Cook in 1952. (See, Diagram 19).**

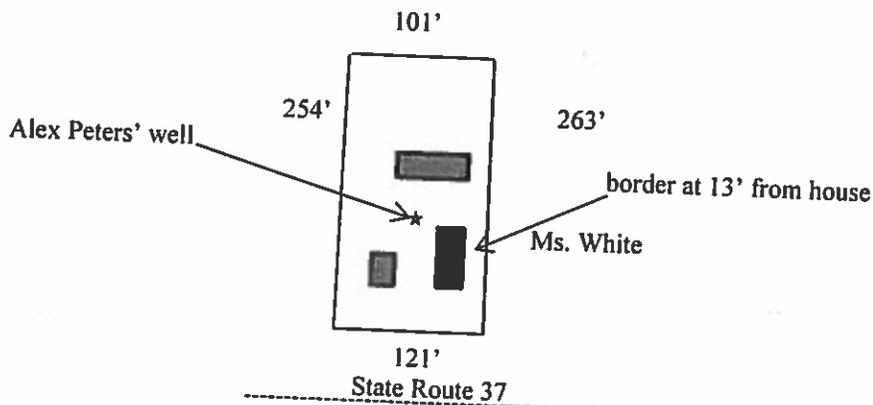


Diagram 20

Ruth Peters Property (Alex Peters and Jos. Peters combined)

Ms. Peters inherited from her father Alex Peters, the one-half acre more or less he purchased from Peter Cook; in addition, to the undefined acreage inherited from his father Jos. Peters. As such, Ms. Peters' property, as combined with the properties previously owned by Alex and Jos. Peters, shall be as follows:

The eastern border shall be set 13' from the Alex Peters' house moving northward 263 feet from centerline of State Route 37 (but not including the road footage) to form the border between Ms. White and Ms. Peters. Then, westward for 101' until meeting property owned by the Saint Regis Mohawk Tribe; thus, forming the respective north and south border between Ms. Peters and Ms. Point. Then, in a southward direction 254'; then, eastward 121' to the point of beginning; thus, hereby forming Ms. Peters' south boundary. The Court has determined that together these properties equal 28,869 Sq. ft. (0.65 acres)¹⁶⁰, which is subject to a licensed surveyor measuring the points as the Court has determined here within. (See, Diagram 20).

Furthermore, by doing so, the property will align and corroborate with the existing historical documents, in that Alex Peters' property will form the northern border of the Joseph Peters property and that the Alex Peters property will also form the southern boundary of the Point property.

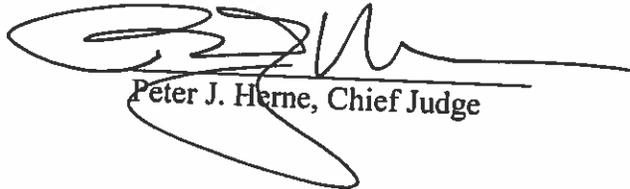
The SRMT Court directed the SRMT GIS Technician to create a map depicting the Court's findings concerning Ruth Peters' property and its borders with Ms. White and Ms. Point. This map illustrates Ms. Peters' property when combined with the properties formerly belonging to Joseph Peters and Alex Peters. The Court felt that it was important to have this map delineate the Jos. Peters property so that the parties could visually see that the 0.65 acres Ms. Peters is entitled to includes the Jos. Peters' property. (See, SRMT Court. *Map of Ruth Peters' combined property with delineation of the Jos. Peters and Alex Peters' property*. Map. SRMT Tribal Clerk's Office GIS Technician. February 25, 2013 (attached to decision).

¹⁶⁰ See also, SRMT Court. *Map of Ruth Peters' combined property with delineation of the Jos. Peters and Alex Peters' property*. Map. SRMT Tribal Clerk's Office GIS Technician. February 25, 2013 (on file with the Court).

THEREFORE IT IS SO ORDERED:

That the Saint Regis Mohawk Tribe deeds for Ms. Peters, Ms. White, and Ms. Point be changed to reflect the aforementioned findings herein and as depicted in the attached GIS map.

Entered by my hand this the 4th day of March, 2013



Peter J. Herne, Chief Judge

claim. The land parcels of the Saint Regis
Navy Tribe are subject to correction as per
a licensed survey, and/or addition of up-
dated information to the Tribal Clerk's office.
Disputes preclude the absolute accuracy
of the parcel land boundaries depicted
on this map.

Map of Ruth Peters' combined property with delineation of the Jos. Peters and Alex Peters' Property, Feb. 25, 2013



Former AMC Warehouse



State Route 37

Wild Bills

13ft from Alex Peter House

P. White

M. Point